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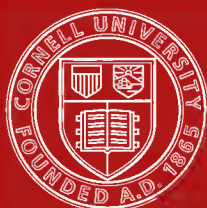
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**The War revenue law of 1898. /**



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THE  
WAR REVENUE LAW  
OF  
1898.

ANNOTATED

BY

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AND

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ALBANY, N. Y.  
MATTHEW BENDER,  
1898.

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## INTRODUCTORY.

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The system of stamp duties originated in Holland in 1624. "In the gallant struggle of the Republic with the overwhelming power of Spain, the States-General had imposed every new tax they could devise ; and, at last, finding their powers of invention exhausted, issued a proclamation offering a reward for the invention of a new and practicable tax. This was gained by the person who invented stamp duties, whose name is unknown." (Dowell's History of Taxation, vol. III, p. 322.) The tax was then called "vectigal chartæ."

The first general stamp tax was imposed in England in 1694 (5 W. & M., c. 21.) The most important additions and changes were made in 1714 "deed duty;" "The Stamp Act 1765," which precipitated the American Revolution; 1782, bills and notes ; 1784, "all receipts ;" 1808; General Stamp Act of 1815 (55 Geo. III, c. 184) ; 1824; 1853 (16 & 17 Vict., c. 59) ; The Stamp Act of 1870 ; and finally all British Stamp Acts were consolidated by ch. 39 of 54 & 55 Victoria, 21 July, 1891.

This statute is cited by its short title, The Stamp Act, 1891. The preceding chapter contains The Stamp Duties Management Act.

The Succession Duty Act was passed in 1853 (16 & 17 Vict., c. 51), and has been variously amended.

The first Act concerning Internal Duties in the United States was passed March 3, 1791 (Stat. vol. I, 199), and affected distilled spirits. The first Stamp legislation was enacted July 6, 1797 (vol. I, 527). "An Act to Establish a General Stamp Office" was passed April 23, 1800 (vol. II, 40). This early legislation was inspired by Hamilton and was abolished 1802, under Jefferson, who denounced "infernal" taxes.

At a special session of Congress in May, 1813, the first real system of internal revenue was adopted. It taxed sugar refining, carriages, the business of distilling and other forms of production. "An Act to Abolish Internal Duties" was passed Dec. 23, 1817 (vol. III, 401).

The Direct Tax Law of 1861 was soon followed by the Revenue Act of July 1, 1862, ch. 119, which became the basis for all our later war revenue legislation. Both it and its principal amendatory successors drew largely upon the earlier American and English acts.

The present Internal Revenue department was created by this act, and was promptly organized

by the first Commissioner, Boutwell, who naively confesses (Introduction to his Manual of the Direct and Excise Tax System) that he did so without making any study, or even examination, of the system long established in England. The Revenue Bureau is a part of the Treasury Department, and is under the superintendence of a commissioner who is appointed by the President. There is a collector in every district, and there are inspectors, gaugers, storekeepers and revenue agents. See R. S. U. S. Title xxxv, pp. 601-686 of 2d Ed. 1878. The new law makes no material change in the department. Provision is made for the promulgation of rules and regulations touching numerous matters, and official publications (to be had on application) will doubtless soon make these accessible.

When the Civil war closed, the federal taxes reached nearly every possible object. Within four years (1862-66) a dozen acts were passed and, as the system was perfected, it was extended until internal taxes were again dubbed "infernial." Some one remarked to Senator Collamer that everything was taxed except coffins. He rejoined: "Don't say that to Sherman or he will have them on the tax list before night!" The number of objects taxed was gradually reduced until spirits and tobacco paid substantially all the internal revenue.

The present act is avowedly (see the title) a war revenue bill. It may prove as successful in a Spanish war as was its "Dutch ancestor" (which came with William of Orange to England and to these colonies on the ships that brought the unwelcome "tea" and "paper" to Boston); but its structural origin is as mixed as the descent of the average American. In fact it is patched together from our former acts, and occasionally the parts that were pasted on the same sheet did not fit and were not edited into proper correlation.

The most important subsequent acts were of March 3, 1863, ch. 74; March 7, 1864, ch. 20; June 30, 1864, ch. 173, being in fact a new General Act supplanting the act of 1862 without directly repealing it; Dec. 22, 1864; March 3, 1865, ch. 78; March 10, 1866; July 13, 1866, ch. 184, being a new General Act to reduce taxes; March 2, 1867, ch. 169; July 20, 1868, ch. 186; July 14, 1870, ch. 255, to reduce taxation; June 6, 1872, ch. 315; Dec. 24, 1872, ch. 13.

This book has been prepared for lawyers, without thought of making it a popular manual. In these early days of the operation of the new law, and in advance of judicial decisions construing it, attention is attracted in an abnormal way to the "rulings" of the Commissioner of Internal Revenue and the various Collectors. The "decisions" of these officers as to special taxes, documentary

and proprietary stamps, which are being given in great profusion, are merely opinions as to the meaning of the law. The courts may or may not adopt such opinions in civil suits which will arise between citizens. These "decisions" may estop the Government and, in suits by the Government to collect penalties or in criminal prosecutions, if the defendant can show that he has followed a "ruling," an absence of intent to evade the law will doubtless be presumed.

As to the part of the government (statutory duties of revenue and legal officers) in enforcing the law, see notes under section 31.

While the so-called rulings and opinions under former acts and under the present law have an undoubted value, they distinctly are not entitled to recognition as precedents before the court. See cases cited on this point under section 6.

The Internal Revenue Laws are in force wherever the jurisdiction of the United States extends. When Oklahoma was temporarily organized as a territory by the act of May 2, 1890, it was determined that they at once became applicable (1890, 19 Opin. Atty.-Gen., 569). Hence they will be in force in Hawaii as soon as our flag is raised there, and they will follow the flag to any other possessions we may acquire.

NEW YORK, 111 BROADWAY.

15 July, 1898.





FOR TABLE OF CASES,

*See page 125.*

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FOR INDEX,

*See page 137.*



THE  
WAR REVENUE LAW  
of 1898.

APPROVED JUNE 13, 1898.

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AN ACT TO PROVIDE WAYS AND MEANS TO MEET WAR EXPENDITURES, AND FOR OTHER PURPOSES.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**BEER AND LIQUOR TAX.**

That there shall be paid, in lieu of the tax of one dollar now imposed by law, a tax of two dollars on all beer, lager beer, ale, porter, and other similar fermented liquors, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. And section thirty-three hundred and thirty-nine of the Revised Statutes is hereby amended accordingly: *Provided*, That a discount of seven and one-half per centum shall be allowed upon all sales by collectors to brewers of the stamps provided for the payment of

said tax: *Provided further*, That the additional tax imposed in this section on all fermented liquors stored in warehouse to which a stamp had been affixed shall be assessed and collected in the manner now provided by law for the collection of taxes not paid by stamps.

This section simply increases the tax per barrel from one dollar to two dollars and adds the words " stored in warehouse," so as to make the tax immediately applicable.

The increased tax must be paid on goods which are in bond at the time the act takes effect. (1867) *Westfall v. Shook*, 5 Blatchford, 383. (7th section, Act of Mch. 7, 1864.)

Fermented liquors are now covered by the provisions of § 3335 to § 3354, U. S. R. S. Section 3339 defines fractional parts of a barrel for purposes of estimating the tax.

### SPECIAL TAXES ON OCCUPATION.

**Sec. 2.** That from and after July first, eighteen hundred and ninety-eight, special taxes shall be, and hereby are, imposed annually as follows, that is to say:

**One.** Bankers using or employing a capital not exceeding the sum of twenty-five thousand dollars shall pay fifty dollars; when using or employing a capital exceeding twenty-five thousand dollars, for every additional thousand dollars in excess of twenty-five thousand dollars, two dollars, and in estimating capital surplus shall be included. The amount of such annual tax shall in all cases be computed on the basis of the capital and surplus for the preceding fiscal year. Every person, firm, or company, and every incorporated or other bank, having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bul-

lion, bills of exchange, or promissory notes are received for discount or sale, shall be a banker under this Act: *Provided*, That any savings bank having no capital stock, and whose business is confined to receiving deposits and loaning or investing the same for the benefit of its depositors, and which does no other business of banking, shall not be subject to this tax.

**Two.** Brokers shall pay fifty dollars. Every person, firm, or company, whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities for themselves or others, shall be regarded as a broker: *Provided*, That any person having paid the special tax as a banker shall not be required to pay the special tax as a broker.

**Three.** Pawnbrokers shall pay twenty dollars. Every person, firm, or company whose business or occupation it is to take or receive, by way of pledge, pawn, or exchange, any goods, wares, or merchandise, or any kind of personal property whatever, as security for the repayment of money loaned thereon, shall be deemed a pawnbroker.

**Four.** Commercial brokers shall pay twenty dollars. Every person, firm or company whose business it is as a broker to negotiate sales or purchases of goods, wares, produce, or merchandise, or to negotiate freights and other business for the owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels, shall be regarded as a commercial broker under this Act.

**Five.** Custom-house brokers shall pay ten dollars. Every person, firm, or company whose occupation it is, as the agent of others, to arrange entries and other custom-house papers, or transact business at any port of

entry relating to the importation or exportation of goods, wares, or merchandise, shall be regarded as a custom-house broker.

**Six.** Proprietors of theaters, museums, and concert halls in cities having more than twenty-five thousand population as shown by the last preceding United States census, shall pay one hundred dollars. Every edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance money is received, not including halls rented or used occasionally for concerts or theatrical representations, shall be regarded as a theater: *Provided*, That whenever any such edifice is under lease at the passage of this Act, the tax shall be paid by the lessee, unless otherwise stipulated between the parties to said lease.

**Seven.** The proprietor or proprietors of circuses shall pay one hundred dollars. Every building, space, tent, or area where feats of horsemanship or acrobatic sports or theatrical performances are exhibited shall be regarded as a circus: *Provided*, That no special tax paid in one State, Territory, or the District of Columbia shall exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be imposed for exhibitions within any one State, Territory, or District.

**Eight.** Proprietors or agents of all other public exhibitions or shows for money not enumerated in this section shall pay ten dollars: *Provided*, That a special tax paid in one State, Territory, or the District of Columbia shall not exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be required for exhibitions within any one State, Territory, or the District of Columbia.

**Nine.** Proprietors of bowling alleys and billiard rooms shall pay five dollars for each alley or table. Every building or place where bowls are thrown or where games of billiards or pool are played, and that are open to the public with or without price, shall be regarded as a bowling alley or a billiard room, respectively.

The scheme, language and rates are taken, with very slight changes, from the Act of June 30, 1864 (chap. 173). This was preceded by the Act of July 1, 1862. The Acts of 1862 and 1864 required a license to be taken out for various occupations (including those mentioned in section 2) and forbade (§ 71 of Act of June 30, 1864) the carrying on of such occupations until the license fees were paid; the new act here simply imposes special taxes to be paid by those in the occupations specified, and the prohibition against carrying on business before paying the special tax is found in the last paragraph of section 4, which see; and also notes to section 31. The old special taxes were repealed by Act of July 14, 1870.

A lawyer who had no license could not recover for his services.

(1869) *Hall v. Bishop*, 3 Daly, 109;

but if there be an express contract for a fixed compensation, a broker may recover.

(1871) *Woodward v. Stearns*, 10 Abb. Pr. N. S. 395.

(1863) *Justice v. Rowand*, 10 Phila. 623.

This method of taxing occupations or privileges has long been in vogue in many of the States, *e. g.*, Maryland, North Carolina, Pennsylvania, Alabama, Texas, Tennessee, and others. The courts of these and other States have passed on many questions similar to those likely to arise under this act.

See as to yearly license and penalty for violation:

(1876) *State v. Johnson*, 65 Me. 362.

Other instances of occupation tax:

(1848) *Simmons v. State*, 12 Mo. 268 (State tax upon lawyers).

(1872) *St. Louis v. Langhlin*, 49 Mo. 559 (city license tax on professions not including lawyers).

(1847) *Carroll v. Mayor, etc., of Tuscaloosa*, 12 Ala. 173 (city license tax on auctioneers).

(1857) *Gunter v. Leckey*, 30 Ala. 591 (State license tax on slave traders).

(1856) *Portland v. O'Neill*, 1 Oreg. 218 (city license tax on brokers).

(1879) *Ex parte* City Council, *re* Knox, 64 Ala. 463 (city tax on lawyers).

The words "special tax" were substituted by chap. 184 of 1866 for "license" in the earlier acts of 1862 and 1864. This appears to have been done with a view to disclaim the right of Congress to interfere with the administrative power of the States and to avoid the appearance of licensing a business which might conflict with State laws. The "license" was nothing more than a receipt for taxes.

See (1866) License Tax Cases, 5 Wall. 462 (Lottery).

(1866) *Pervear v. Commonwealth*, 5 Wall. 475 (Sale of Liquor).

(1865) *McGuire v. Commonwealth*, 3 Wall. 387 (Sale of Liquor).

(1865) *Commonwealth v. Holbrook*, 10 Allen, 200 (Sale of Liquor).

(1867) *State v. Delano*, 54 Me. 501 (Sale of Liquor).

(1864) *U. S. v. Riley*, 5 Blatchf. 204 (Sale of Liquor).

(1894) *Plumley v. Mass.*, 155 U. S. 461 (Oleomargarine).

Section 81 of ch. 173, Stat. 1864, was amended by ch. 184, Stat. 1866, by the addition of a proviso expressly saying that the payment of a federal special tax shall not authorize the doing within a State of anything prohibited by the State laws. And this is essentially the same as § 67 in the first act (Stat. 1862, ch. 119).

Special taxes are constitutional.

(1866) License Tax Cases, 5 Wall. 462.

They must be paid in advance.

(1880) *U. S. v. Clare*, 14 Phila. 543; 2 Fed. R. 55.

The special taxes required to be paid prior to the passage of this act related only to liquor, tobacco, oleomargarine and filled cheese. They must be paid in stamps on July 1st, by persons who have registered with the Collector before engaging in the business, and the Special Tax Stamp must be displayed at the place of business. R. S., §§ 3232 to 3246; *U. S. v. Clare*, *supra*, and see (1867) *U. S. v. Shea*, 5 Blatch. 546; (1869) *U. S. v. 35 Bbls. of Highwines*, 2 Biss. 88.

A special or business tax should be assessed where the business is carried on, and not at the person's residence if it is elsewhere.

(1871) *Bates v. Mayor*, etc., of Mobile, 46 Ala. 158.

And see (1863) *Miner v. Fredonia*, 27 N. Y. 155.

See the last paragraph of section 4 as to payment in advance and penalty.

A partnership pays only a single special tax (§ 3234, R. S.), but one payment will not cover several places of business (§ 3235, R. S.).



Where a firm paid a special tax (brewer's) and was dissolved during the year, the partner who continued the business was not required to pay a new tax.

(1889) *U. S. v. Davis*, 37 Fed. Rep. 468.

(1878) *U. S. v. Glab*, 99 U. S. (9 Otto) 225, aff'g s. c. 1 McCrary (*U. S.*) 166.

(1867) *Spielman v. State*, 27 Md. 520.

Under the Act of June 30, 1864, one professional license did not suffice for a firm. Each member was required to pay. Special No. 4, July 30, 1864. Collection of Circulars 1871, pp. 156, 158.

### Bankers.

Ch. 119 of 1862 (July 1, 1862), sec. 64, subd. 1.

Ch. 173 of 1864 (June 30, 1864), sec. 79, subd. 1, amended by ch. 184 of 1866 (July 13, 1866), sec. 9.

O. S. R. S., § 3407.

A banker, under the definition in this section,

(1) Must employ capital;

(2) Must have a place of business;

(3) Where (a) credits are opened subject to check; or,

(b) Money is loaned on securities; or,

(c) Stocks, etc., are received for discount or sale.

An ordinary bank of deposit or discount comes within (a) (b) and (c); a trust company comes within (b); query, does a stock broker, having capital and a place of business, come within (c)? It would seem so under the following decision:

One who has a place of business, indicated by a sign over the door, where his mail matter is received and where he can be met by his clients and where the latter can deliver stocks to be sold by him or under his supervision, and who buys and sells stocks for his customers and who in so doing employs a capital of \$30,000, is a banker.

(1890) *Richmond v. Blake*, 132 U. S. 592.

Bankers who buy and sell Government securities for themselves are not brokers.

(1865) *U. S. v. Fisk*, 3 Wall. 445.

(1866) *Clark v. Gilbert*, 5 Blatchford, 330.

"Having a place of business where deposits are received and paid out on checks, and where money is loaned upon security, is the substance of the business of a banker."

(1875) *Warren v. Shook*, 91 U. S. 704.

Whether brokers who buy, carry and sell stocks, etc., for customers "on a margin" are bankers, *quære?*

(1874) *Clark v. Bailey*, 12 Blatchford, 156.

But securities or money left with such brokers as a pledge for their indemnity, to save them from loss on purchasing or selling stocks for their customers, are not "moneys subject to payment by check or draft," in any just sense of those terms.

(1874) *Clark v. Bailey*, 12 Blatchford, 156, affirmed *Bailey v. Clark*, 21 Wall. 284.

For definition of banker see:

(1872) *Oulton v. Savings Inst.*, 17 Wall. 118.

A corporation whose business is to invest its capital in real estate bonds and mortgages and negotiate and sell these is not a "banker."

(1876) *Selden v. Equitable Trust Co.*, 94 U. S. 419.

(1877) *Oregon, etc., Trust Co. v. Rathbun*, 5 Sawyer, 32.

Bank license does not cover pawnbroking.

(1879) *New Orleans v. Metro. Loan Bk.*, 31 La. An. 310.

"Capital" under the Act of 1864 (subd. 1, § 79), held to mean the capital as fixed by the charter and not to include surplus earnings.

(1866) *Mechanics', etc., Bk. v. Townsend*, 5 Blatchf. 315.

The "capital" of a banker does not include money borrowed by him, although used in his business, but means "the property taken from other investments or uses and set apart for and invested in the special business, and in the increase, proceeds and earnings of which property beyond expenditures incurred in its use, consist the profits made in the business."

(1874) *Bailey v. Clark*, 21 Wall. 284.

Bank Surplus:

(1873) *Dollar Sav. Bk. v. U. S.*, 19 Wall. 227.

### On question of amount of capital employed.

Under the Act of 20 July, 1868, § 49, the revenue officer has power to examine the books of banks and brokers without declaring his purpose.

(1870) *Stanwood v. Green*, 2 Abb. (U. S.) 184.

Examination of books under § 14, Act 1864, not unconstitutional infringement of right.

(1868) *In re Lippmann*, 3 Ben. 95.

(1871) *In re Strouse*, 1 Sawyer, 605.

R. S., § 3163, gives a supervisor the power to examine all persons, books, papers, accounts and premises. This probably does not offend the 4th Amendment to the Constitution so far as it affects distillers and others who voluntarily conduct their business under governmental surveillance.

(1875) *In re Frederick Becker*, 21 Int. R. R. 243.

(1875) *U. S. v. Mason*, 6 Biss. 350.

(1876) *U. S. v. A Distillery*, 22 Int. R. R. 195.

(1875) *U. S. v. Distillery*, 6 Biss. 483.

(1875) *U. S. v. 3 Tons of Coal*, 6 Biss. 379.

(1869) *In re Meador*, 1 Abb. C. C. 317.

The proceedings upon a refusal to disclose are by order to show cause or by attachment in contempt. R. S., § 3175.

(1870) *In re Chadwick*, 1 Lowell, 439.

#### **Inspection of paid checks.**

(1877) *U. S. v. Mann*, 95 U. S. 580.

#### **Brokers.**

Ch. 119 of 1862 (July 1, 1862), § 64, subd. 13.

Ch. 173 of 1864 (June 30, 1864), § 79, subd. 9, amended by Act of March 3, 1865, and ch. 184 of 1866 (July 13, 1866), § 9.

Persons who buy and sell stocks, etc., on their own account are to be deemed brokers.

(1874) *U. S. v. Cutting*, 3 Wall. 441.

(1866) *Clark v. Gilbert*, 5 Blatchf. 330.

Bankers who buy and sell government securities for themselves are not brokers.

(1874) *U. S. v. Fisk*, 3 Wall. 445.

"The purpose and intent \* \* \* was to make it mean that every man who sold his own stock was a broker and liable to pay \$50 for a license."

(1874) *U. S. v. Fisk*, 3 Wall. 445.

Bankers who buy and sell securities for others as well as themselves are brokers, and their sales are subject to tax. 11 Opin. Atty.-Gen. 482.

A broker who buys and sells stocks in his own name on a margin for a customer and at the latter's risk, held to be a broker under § 99 of the Act of 30 June, 1864.

(1872) *Northrup v. Shook*, 10 Blatchf. 243.

" Ordinarily, the term ' broker ' is applied to one acting for others; but the part of the definition which speaks of purchases and sales for himself is equally important as that which speaks of sales and purchases for others. All parts of the definitions are qualified by the words ' whose business it is.' Thus, if A. B. has \$10,000 which he desires to invest, and purchases United States stock, or state stock, or any other securities, he does not thereby become a broker. Nor if he owns \$10,000 of U. S. stock which he wishes to sell to raise money to pay his debts, or because he is not satisfied with six per cent. interest, is he thereby made a broker. It is only when making sales and purchases is his business, his trade, his profession, his means of getting his living or of making his fortune, that he becomes a broker within the meaning of the statute. Nor is it believed that a sale, by one doing a banking business only, of a security received by him for the repayment of a legitimate loan, would make him a broker, and subject to the tax. This would not be deemed an act of brokerage, either under the statute or upon general principles of law. When it is his business the statute properly holds all such acts, whether in the name of himself ostensibly or in the name of others, as the acts of a broker. The danger and the facility for evasion of the statute furnish excellent reasons for the adoption of this provision."

(1875) *Warren v. Shook*, 91 U. S. 704, 710.

See (1893) *Jackson v. Hough*, 38 W. Va. 237.

As to what constitutes a broker under a state license law see (1885) *State v. Duncan*, 16 Lea (Tenn.) 75.

(1893) *Jackson v. Hough*, 38 W. Va. 237.

### **Pawnbrokers.**

Ch. 119 of 1862 (July 1, 1862), § 64, subd. 7.

Ch. 173 of 1864 (June 30, 1864), § 79, subd. 10, amended by ch. 184 of 1866 (July 13, 1866), § 9.

Bank license does not cover pawnbroking.

*New Orleans v. Metropolitan Loan Bank*, (1879) 31 La. An. 310.

A ticket or check given by a pawnbroker under a California law was held to require a stamp under the Act of 1864, § 170.

(1870) *U. S. v. Smith*, 1 Saw. 192.

### **Commercial Brokers.**

Ch. 119 of 1862 (July 1, 1862), § 64, subd. 14.

Ch. 173 of 1864 (June 30, 1864), § 79, subd. 14, amended by ch. 184 of 1866 (July 13, 1866), § 9.

Act of June 30, 1864, enumerates and defines many classes of brokers. The new act takes in a few of these, using the same language. Hence, all classes not included in the new act are not taxed.

The difference between a factor or commission merchant and a broker is stated by all the books to be this: A factor may buy and sell in his own name, and he has the goods in his possession; while a broker, as such, cannot ordinarily buy or sell in his own name, and has no possession of the goods sold. The plaintiffs made the sales themselves, in their own names, at their own store, on commission, and had possession of the goods as soon as the sales were made, and delivered or shipped them to their customers. This course of business clearly distinguished them as commission merchants as contradistinguished from brokers or agents.

(1874) *Slack v. Tucker & Co.*, 23 Wall. 321 (under Act of 1864), reversing *Tucker v. Slack*, 1 Holmes, 485.

Brokers who acted simply as agents for the purchasers of cotton, and whose principals paid directly for the cotton to the sellers and afterward paid the brokers a percentage for their services, were not commercial brokers within the act, for the act (9th sec. of July 13, 1866), laid a tax on sales and these brokers did not *sell*, but *bought*.

"The section of the act referred to provides for taxes in a great variety of sales by bankers, brokers and others, of stocks, real estate, etc., but it is always a tax on sales, and always collected of the seller, or his broker or agent."

(1872) *Stockdale, Collector, v. Doswell*, 16 Wall. 156.

A farmer who occasionally and incidentally buys cattle is not a cattle broker.

(1867) *U. S. v. Kenton*, 2 Bond, 97.

A market gardener, selling his products from his wagon in the city on market days is a "produce broker" under § 79 of the Act of 1866.

(1870) *U. S. v. Simons*, 1 Abb. 470; 7 Phila. 607.

As to who are "brokers" and how the question is to be decided, see:

(1873) *Blackford v. State*, 8 Heisk. (Tenn.) 538.

(1872) *State v. Field*, 49 Mo. 270.

(1884) *Braun v. Chicago*, 110 Ill. 186.

A tax on the occupation of "real estate broker" is constitutional.

(1873) *Wiltse v. State*, 8 Heisk. (Tenn.) 544.

**Custom House Brokers.**

Ch. 173 of 1864 (June 30), § 79, subd. 15.

Ch. 184 of 1866 (July 13), § 9.

**Proprietors of Theaters, etc.**

Ch. 119 of 1862 (July 1), § 64, subd. 17.

Ch. 173 of 1864 (June 30), § 79, subd. 37.

Ch. 184 of 1866 (July 13), § 9.

A "proprietor" of a still under the revenue law means the person who has exclusive control, *e. g.*, the lessee, not the lessor.

(1878) U. S. *v.* Van Slyke, 8 Biss. 227. See U. S. R. S., § 3251.

**Circuses and Public Exhibitions.**

Ch. 119 of 1862 (July 1), § 64, subd. 18.

Ch. 173 of 1864 (June 30), § 79, subd. 38.

Ch. 184 of 1866 (July 13), § 9.

**Bowling Alleys and Billiard Rooms.**

Ch. 119 of 1862 (July 1, 1862), § 64, subd. 20.

Ch. 173 of 1864 (June 30, 1864), § 79, subd. 40, amended by ch. 184 of 1866 (July 13, 1866), § 9.

"Any person who appears to be, or for the time being is, in the possession and control of a place or building where a billiard table is kept for public use, is *prima facie* the proprietor of a billiard-room and liable to pay this special tax."

(1871) U. S. *v.* Howard, 1 Sawyer, 507.

Billiard license good from delivery, not from date.

(1878) State *v.* Pate, 67 Mo. 488.

Bagatelle tables, called pigeon-holes, are not billiard tables. 9 I. R. R. 30.

**TOBACCO, CIGARS, CIGARETTES, AND SNUFF.**

**Sec. 3.** That there shall, in lieu of the tax now imposed by law, be levied and collected a tax of twelve cents per pound upon all tobacco and snuff, however prepared, manufactured, and sold, or removed for consumption or sale; and upon cigars and cigarettes which shall be manufactured and sold, or removed for consumption or sale,

there shall be levied and collected the following taxes, to be paid by the manufacturer thereof, namely, a tax of three dollars and sixty cents per thousand on cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, and of one dollar per thousand on cigars made of tobacco or any substitute therefor, and weighing not more than three pounds per thousand; and a tax of three dollars and sixty cents per thousand on cigarettes made of tobacco or any substitute therefor, and weighing more than three pounds per thousand; and one dollar and fifty cents per thousand on cigarettes made of tobacco or any substitute therefor, and weighing not more than three pounds per thousand: *Provided*, That in lieu of the two, three, and four ounce packages of tobacco and snuff now authorized by law, there may be packages thereof containing one and two-third ounces, two and one-half ounces, and three and one-third ounces, respectively, and in addition to packages now authorized by law, there may be packages containing one ounce of smoking tobacco.

And there shall also be assessed and collected with the exceptions hereinafter in this section provided for, upon all the articles enumerated in this section which were manufactured, imported, and removed from factory or custom-house before the passage of this Act bearing tax stamps affixed to such articles for the payment of the taxes thereon, and canceled subsequent to April fourteenth, eighteen hundred and ninety-eight, and which articles were at the time of the passage of this Act held and intended for sale by any person, a tax equal to one-half the difference between the tax already paid on such articles at the time of removal from the factory or custom-house and the tax levied in this Act upon such articles.

Every person having on the day succeeding the date of the passage of this Act any of the above-described articles on hand for sale in excess of one thousand pounds of manufactured tobacco and twenty thousand cigars or cigarettes, and which have been removed from the factory where produced or the custom-house through which imported, bearing the rate of tax payable thereon at the time of such removal, shall make a full and true return under oath in duplicate of the quantity thereof, in pounds as to the tobacco and snuff and in thousands as to the cigars and cigarettes so held on that day, in such form and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Such returns shall be made and delivered to the collector or deputy collector for the proper internal-revenue district within thirty days after the passage of this Act. One of said returns shall be retained by the collector and the other forwarded to the Commissioner of Internal Revenue, together with the assessment list for the month in which the return is received, and the Commissioner of Internal Revenue shall assess and collect the taxes found to be due, as other taxes not paid by stamps are assessed and collected.

And for the expense connected with the assessment and collection of the taxes provided by this Act there is hereby appropriated the sum of one hundred thousand dollars, or so much thereof as may be required, out of any moneys in the Treasury not otherwise appropriated, for the employment of such deputy collectors and other employees in the several collection districts in the United States, and such clerks and employees in the Bureau of Internal Revenue as may, in the discretion of the Commissioner of Internal Revenue, be necessary for a period not exceeding one year, to be compensated for their serv-



ices by such allowances as shall be made by the Secretary of the Treasury, upon the recommendation of the Commissioner of Internal Revenue. And the Commissioner of Internal Revenue is authorized to employ ten agents, to be known and designated as internal-revenue agents, in addition to the number now authorized in section thirty-one hundred and fifty-two of the Revised Statutes as amended, and the existing provisions of law in all other respects shall apply to the duties, compensation, and expenses of such agents.

Tobacco has continued since 1862 to be taxed for revenue, and the general provisions covering it are to be found in R. S., §§ 3355 to 3406, and amendments.

As to former rates on tobacco and snuff, see R. S., § 3368, amended Oct. 1, 1890 (26 Stat. L. 567, § 30), and as to cigars, § 3394, amended March 3, 1883 (22 Stat. L. 488), July 24, 1897 (ch. 11; § 10).

§ 3362, R. S., amended March 1, 1879, ch. 125, § 14, prescribes the manner in which tobacco and snuff shall be put up.

As to tobacco on hand when the increased tax takes effect (§ 173 of Act of July 1, 1864), see:

(1877) *Gale & Ax v. Sauerwein*, 1 Hughes, 332, which held that tobacco on which tax had been paid at lower rate was not taxable again at higher rate after act took effect.

An increased tax was collected upon tobacco that was sold and removed on the morning of the day during the afternoon of which the President approved the law providing for the increase. This was held to be *ex post facto* and recovery was had of the tax so paid under protest.

(1878) *Burgess v. Salmon*, 7 Otto, 381, affirming *Salmon v. Burgess*, 1 Hughes, 356.

As to effect of a change in the law upon tobacco in warehouse:

(1879) *Jones v. Blackwell*, 10 Otto, 599; and see I. R. Tax on Tobacco, 14 Opin. Atty.-Gen. 110 (Aug. 27, 1872).

Last paragraph.

Sections 3140-3171, being ch. 1 of tit. xxxv. U. S. R. S., concern officers of Internal Revenue.

Section 3152 was amended by 20 Stat. 178 and 329.

The change in the size of packages was made to enable the dealers to maintain the present price of a popular sized package by slightly reducing the size. It is practically an adjustment of the increased tax to the demands of the 5 and 10-cent trade.

See Cong. Rec., p. 6021, June 1, 1898.

§ 3362, U. S. R. S., prescribes the manner in which tobacco and snuff shall be put up and provides certain exceptions as to sales in bulk and for export.

As to the general organization of the Revenue Department, see R. S. title xxxv.

### **SPECIAL TAXES ON TOBACCO DEALERS AND MANUFACTURERS.**

**Sec. 4.** That from and after July first, eighteen hundred and ninety-eight, special taxes on tobacco dealers and manufacturers shall be and hereby are imposed annually, as follows, the amount of such annual taxes to be computed in all cases on the basis of the annual sales for the preceding fiscal year:

Dealers in leaf tobacco whose annual sales do not exceed fifty thousand pounds shall each pay six dollars. Dealers in leaf tobacco whose annual sales exceed fifty thousand and do not exceed one hundred thousand pounds shall pay twelve dollars, and if their annual sales exceed one hundred thousand pounds shall pay twenty-four dollars.

Dealers in tobacco whose annual sales exceed fifty thousand pounds shall each pay twelve dollars.

Every person whose business it is to sell, or offer for sale, manufactured tobacco, snuff, or cigars shall be regarded as a dealer in tobacco: *Provided*, That no manufacturer of tobacco, snuff, or cigars shall be required to pay a special tax as dealer in manufactured tobacco and cigars for selling his own products at the place of manufacture.

Manufacturers of tobacco whose annual sales do not exceed fifty thousand pounds shall each pay six dollars.

Manufacturers of tobacco whose annual sales exceed fifty thousand and do not exceed one hundred thousand pounds shall each pay twelve dollars.

Manufacturers of tobacco whose annual sales exceed one hundred thousand pounds shall each pay twenty-four dollars.

Manufacturers of cigars whose annual sales do not exceed one hundred thousand cigars shall each pay six dollars.

Manufacturers of cigars whose annual sales exceed one hundred thousand and do not exceed two hundred thousand cigars shall each pay twelve dollars.

Manufacturers of cigars whose annual sales exceed two hundred thousand cigars shall each pay twenty-four dollars.

And every person who carries on any business or occupation for which special taxes are imposed by this Act, without having paid the special tax herein provided, shall, besides being liable to the payment of such special tax, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

This section revives special taxes which were repealed by Act of Oct. 1, 1890 (§ 26). See R. S. (1878), § 3244; as to dealers in leaf tobacco (subd. 6 and 7); as to dealers in tobacco (subd. 8); as to manufacturers of tobacco (subd. 9); as to manufacturers of cigars (subd. 10).

Dealers in leaf tobacco were formerly (Act of 1872) classified as wholesale and retail. The minimum sales feature of the tax on dealers in tobacco is new, although there was a classification prior to 1872. The last tax embraced all such dealers. The classification of manufacturers according to annual sales is also new.

On April 29, 1898, Mr. McMillin asked Mr. Dingley whether the tax on dealers in tobacco would interfere with the sales of farmers and producers. Mr. Dingley said no, and that both the Committee and the Commissioner of Internal Revenue had so agreed.

Cong. Rec. 4851.

Employers who for accommodation and without profit deal out manufactured tobacco to their employees are dealers liable to the special tax.

(1881) U. S. v. Vinson, 8 Fed. R. 507.

The last paragraph of this section is one of several instances in the act of dislocated provisions. It manifestly applies to all the occupations specified in the nine paragraphs of section 3, and to section 36, as well as to section 4.

By the Act of 1862, a person who carried on a taxable trade without a license forfeited three times the tax (§ 59). This was changed in 1863 (ch. 74, § 24) to imprisonment not exceeding two years for knowingly offending. By ch. 173, § 73, Statute 1864, the penalty was liability to the tax, imprisonment up to two years, or a \$500 fine, or both. In 1866 (ch. 184) the penalty remained unchanged when the "license" became a "special tax." In 1867 (ch. 169) the offender is made liable to the payment of the tax and to a fine of not less than \$10 nor more than \$500, except tobacco and liquor-dealers, who may be imprisoned from sixty days to two years.

By ch. 255 of 1870 (July 14), special taxes were repealed after May 1, 1871, with certain exceptions as to liquor and tobacco. The last clause of this section now revives the prohibition and severe penalties, somewhat modified.

For definition of "carrying on the business" of liquor selling, see (1886) U. S. v. Rennecke, 28 Fed. Rep. 847.

### USE OF OLD RATE STAMPS.

**Sec. 5.** Until appropriate stamps are prepared and furnished, the stamps heretofore used to denote the payment of the internal revenue tax on fermented liquors, tobacco, snuff, cigars and cigarettes may be stamped or imprinted with a suitable device to denote the new rate of tax, and shall be affixed to all packages containing such articles on which the tax imposed by this Act is

paid. And any person having possession of unaffixed stamps heretofore issued for the payment of the tax upon fermented liquors, tobacco, snuff, cigars, or cigarettes shall present the same to the collector of the district, who shall receive them at the price paid for such stamps by the purchasers and issue in lieu thereof new or imprinted stamps at the rate provided by this Act.

See § 25.

To meet the great initial demand, the department obtained a transfer of unissued postage-stamps and issued them as revenue stamps imprinted "I. R."

#### **STAMPS ON DOCUMENTS, MEDICINES, ETC. (Schedules A and B).**

**Sec. 6.** That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.

And there shall also be levied, collected, and paid, for and in respect to the medicines, preparations, matters, and things mentioned and described in Schedule B of this Act, manufactured, sold, or removed for sale, the several taxes or sums of money set down in words or figures against the same, respectively, or otherwise specified or set forth in Schedule B of this Act.

Act of 1862 (July 1), § 94.

Act of 1864 (June 30), § 151.

Stamp legislation is altogether *positivi juris*, involving nothing of principle or of reason.

(1834) *Morley v. Hall*, 2 Dowl. 494.

Generally, penal and revenue acts are to be construed strictly, with a liberal interpretation upon words of exception.

(1827) *U. S. v. Gooding*, 12 Wheat. 460.

(1807) *Warrington v. Furber*, 8 East, 242.

But where there is any doubt, the government has the burden of proof.

(1855) *Gurr v. Scudds*, 11 Exch. R. 190.

(1828) *Doe v. Amos*, 2 M. & R. 180.

Stamp laws are directly penal and in restraint of common right, and are to be construed strictly.

(1865) *Hugus v. Strickler*, 19 Iowa, 413.

(1864) *Celley v. Gray*, 37 Vt. 136.

(1868) *Foyd v. Hood*, 57 Pa. St. 98.

(1867) *Vail v. Knapp*, 49 Barb. 299.

(1869) *N. H. etc. Co. v. Quintard*, 31 How. Pr. 29.

*Contra*: Revenue statutes which impose forfeitures are not penal but remedial and to be liberally construed.

(1870) *U. S. v. Hodson*, 10 Wall. 395.

(1868) *U. S. v. Olney*, 1 Abb. 275.

(1845) *Taylor v. U. S.*, 3 How. 197.

(1874) *Smythe v. Fiske*, 23 Wall. 374.

The power of Congress to enact revenue laws is founded on § 8, art. 1 of Constitution.

See (1866) *Baird v. Pridmore*, 31 How. Pr. 359.

“A slight examination of the act and of the schedules forming a part of it shows very clearly that the subjects of taxation are written instruments in general use, whose character and objects are well understood and which have a definite meaning.”

(1863) *Jackson v. Allen*, 26 How. Pr. 119 (referring to Act of 1862).

Two instruments constituting in fact one contract require only one stamp.

(1871) *Bowker v. Goodwin*, 7 Nev. 135.

As to the distinction between an informal letter and a formal instrument requiring a stamp, see:

(1868) *Boyd v. Hood*, 57 Pa. St. 98.

(1866) *Crocker v. Foley*, 13 Allen (Mass.) 376.

A letter promising marriage does not require a stamp, the value not being measurable.

(1818) *Orford v. Cole*, 2 Starkie, 351.

And see *Mercer v. Mercer*, 29 Iowa 557.

A joint and several agreement by several persons to pay the sums therein agreed requires only one stamp.

(1867) *Ballard v. Burnside*, 49 Barb. 102.

See (1811) *Davis v. Williams*, 13 East, 232, and note.

“The construction given to the statute by the proper executive-officers should be regarded, and though not having the force of a judicial construction, is entitled to much weight, if for no other reason that there may be no conflict in the two departments of the government in applying and executing the law.”

(1865) *Hugus v. Strickler*, 19 Iowa, 413

See also

(1865) *Smith v. Waters*, 25 Ind. 397.

(1896) *In re Merchandise Imported by Hoyt*, 75 Fed. Rep. 998.

(1867) *Cardinel v. Smith, Deady* (U. S.) 197, 204, where the court comments on the readiness of the Commissioner to rule both ways, and says that, being called upon to determine what the law actually is, it can give but little weight to such rulings.

The present Act is in many respects a re-enactment of former laws which had been officially construed by the revenue officers, but such re-enactment does not have the effect of adopting the constructions thus given.

See (1873) *Dollar Sav. Bk. v. U. S.*, 19 Wall. 227, 9 Alb. L. J. 302.

English judges have alluded to long-continued usages of the stamp office as a practical commentary on the law, although not conclusive as to interpretation.

See *Edwards on Stamp Act*, p. 9.

*Tilsley on Stamp Laws*, p. 10.

It is wholly immaterial who affixed the stamps.

(1868) *Adams v. Dale* 29 Ind. 273, 9 I. R. R. 163.

See *Cancellation*; notes to section 9.

The actual time of making, and not the apparent date of, an instrument determines its validity when unstamped.

(1866) *Willey v. Robinson*, 13 Allen (Mass.) 128.

Obligations executed prior to date fixed in Act of 1862 needed no stamp to make them admissible in evidence.

(1867) *Bayly v. McKnight*, 19 La. An. 321.

(1866) *Contra, McLearn v. Skelton*, 18 La. An. 514.

The decision of a State Court as to the amount of the tax to be affixed in stamps is not subject to review in the U. S. Supreme Court.

(1866) *Campau v. Lewis*, 3 Wall. 106.

It is no defense to the collection of a judgment that it was obtained on a note which was not duly stamped.

(1870) *Mogelin v. Westhoff*, 33 Tex. 788.

New matter written upon an old (stamped) instrument requires a new stamp.

(1827) *Reed v. Deere*, 7 Barn. & C. 261.

(1809) *Knill v. Williams*, 10 East, 431.

(1812) *Bathe v. Taylor*, 15 East, 412.

And many other cases so holding, where the alteration or addition created an essentially new instrument. But minor changes and corrections do not so operate and the question of materiality is for the court.

(1801) *Kershaw v. Cox*, 3 Esp. N. P. C. 246 (frequently followed); (1828) *Steele v. Spencer*, 1 Peters, 552.

The burden of accounting for a material alteration is upon the person claiming under the instrument.

(1847) *Waring v. Smyth*, 2 Barb. Ch. 119; (1839) *Herrick v. Malin*, 22 Wend. 388.

Where, under the common law, an oral promise or acknowledgment was binding, and a later statute has required it to be in writing (*e. g.*, to take a case out of the statute of limitations, to confirm an infant's promise, etc.), the English statutes provided that such instruments shall not require revenue stamps.

See 9 Geo. IV., c. 14.

### FAILURE TO STAMP DOCUMENTS.

**Sec. 7.** That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without



having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than one hundred dollars, at the discretion of the court, and such instrument, document, or paper, as aforesaid, shall not be competent evidence in any court.

1862 (July 1), § 95; U. S. R. S., § 3422.

Not in Act of 1864, June 30, in this form.

Compare § 10, which is taken from Acts of 1862 and 1864.

The former acts attempted to inflict penalties and forfeitures for failure to conform to the act, in addition to making the instrument inadmissible in evidence. The new act has done away with the forfeitures and has substituted a system by which the forbidden acts are made misdemeanors.

### MISDEMEANORS.

Thus, *Section 7* makes the making, signing or issuing of documents, etc. (no question of intent involved), a misdemeanor with a fine on conviction up to \$100. This covers all papers broadly.

*Section 10* makes the making, signing, issuing or accepting and paying negotiable paper, *with intent to evade the act*, a misdemeanor, with fine on conviction up to \$200. This is limited to negotiable paper.

*Section 11* makes the accepting any foreign bill of exchange, etc. (no question of intent involved), a misdemeanor, with a fine on conviction up to \$100. This applies only to negotiable paper.

*Section 13*, making the registering, issuing, selling or transferring any document etc., in Schedule A, *with intent to evade the act*, a misdemeanor, with fine on conviction up to \$50 or six months, or both.

*Section 9* makes the fraudulent use of a stamp without cancelling it (no further question of intent) a misdemeanor, with fine on conviction from \$50 to \$500, or six months, or both.

The Act as it passed the House, provided, in many places, for specific money penalties, and did not make the offenses misdemeanors. In nearly every instance the Senate, besides making intentional evasion a misdemeanor, removed the minimum fine and left it to the discretion of the courts to punish a technical error by a nominal fine and a grave offense by a heavy penalty of both fine and imprisonment.

That science and system did not have much part in this law-making, see a Senator's explanation of his proposed amendment (Cong,

Rec., p. 5587, May 17, 1898) to add the words "with intent to evade the provisions of this Act". "I see those words are to be found in some of the old acts in regard to stamps in 1864, 1865, 1866 and along there."

(Amendment agreed to.)

### EFFECT ON THE INSTRUMENT.

*Section 7* makes any unstamped instrument, document or paper (no question of intent) inadmissible in evidence in any court.

(As to rulings of State Courts, see notes to § 14.)

Apparently there is no adequate provision for the cure of an innocent omission. *Section 13* is limited in its cure to bonds, debentures, certificates of stock or of indebtedness. The relief implied in § 14 by the word "until" will be found limited to the relief of § 13, which contains the only provision for post-stamping.

*Section 10*, referring exclusively to negotiable paper, is silent as to the effect on the instrument of the omission to affix stamp with design to evade the act; but apparently these instruments are included in the broad language of *section 7*, and are therefore inadmissible in evidence and also in the identical terms of *section 13*, and are therefore invalidated. The British acts have always reversed this rule and have invalidated such quasi-private and temporary papers as negotiable instruments, bills of lading, proxies and marine insurance policies, while generally showing liberality as to post-stamping of other papers, needed in evidence.

See Griffith's Stamp Digest, Appendix III, p. 260; Tilsley on Stamp Laws, p. 154, and cases cited; Stamp Act 1891, § 15.

*Section 13* invalidates and renders of no effect any unstamped instrument, document or paper mentioned in Schedule A, when the omission is with intent to evade the act. This refers to the same papers, etc., as *section 7*, but it adds intent and invalidates the instrument, while *section 7* merely makes it inadmissible in evidence.

*Section 14* broadly prohibits the admission or use in evidence, without proper stamps, of any paper required to be stamped, until cured as provided by law, *i. e.*, in the limited way in *section 13*, which contains the only provision for cure.

The Act as it passed the House made the unstamped instrument "invalid and of no effect," and also inserted in what is now *section 15* the words "shall be utterly void."

As to the construction put by the courts on similar clauses in former acts, see, under *section 14*, as to *intent*.

**COUNTERFEITING, ETC.**

**Sec. 8.** That if any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument which shall have been provided, or may hereafter be provided, made, or used in pursuance of this Act, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled, the impression, or any part of the impression, of any such stamp, die, plate, or other instrument as aforesaid, upon any vellum, parchment, or paper, or shall stamp or mark, or cause or procure to be stamped or marked, any vellum, parchment, or paper with any such forged or counterfeited stamp, die, plate, or other instrument, or part of any stamp, die, plate, or other instrument, as aforesaid, with intent to defraud the United States of any of the taxes hereby imposed, or any part thereof; or if any person shall utter, or sell, or expose for sale, any vellum, parchment, paper, article, or thing having thereupon the impression of any such counterfeited stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument, or any such forged, counterfeited, or resembled impression, or part of impression, as aforesaid, knowing the same to be forged, counterfeited, or resembled; or if any person shall knowingly use or permit the use of any stamp, die, plate, or other instrument which shall have been so provided, made, or used as aforesaid, with intent to defraud the United States; or if any person shall fraudulently cut, tear, or remove, or cause or procure to be cut, torn, or removed, the impression of any stamp, die, plate, or other instrument which shall have been provided, made, or used in pursuance of this Act from any vellum, parchment, or paper, or any instrument or writing charged or charge-

able with any of the taxes imposed by law; or if any person shall fraudulently use, join, fix, or place, or cause to be used, joined, fixed, or placed, to, with, or upon any vellum, parchment, paper, or any instrument or writing charged or chargeable with any of the taxes hereby imposed, any adhesive stamp, or the impression of any stamp, die, plate, or other instrument, which shall have been provided, made, or used in pursuance of law, and which shall have been cut, torn, or removed from any other vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall wilfully remove or cause to be removed, alter or cause to be altered, the canceling or defacing marks of any adhesive stamp with intent to use the same, or to cause the use of the same, after it shall have been once used, or shall knowingly or wilfully sell or buy such washed or restored stamp, or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same, or prepare the same with intent for the further use thereof; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, or writing, then, and in every such case, every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting in committing any such offenses as aforesaid shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall forfeit the said counterfeit stamps and the articles upon which they are placed, and shall be punished by fine not exceeding one thousand dollars, or by imprisonment and confinement at hard labor not exceeding five years, or both, at the discretion of the court.

1862 (July 1), § 98.

1864 (June 30), § 155.

1866 (July 13), § 9.

1869 (April 10), § 2.

U. S. R. S., 1878, § 3429.

See notes under section 31.

### CANCELLATION OF STAMPS: PRIVATE PROPRIETARY STAMPS.

**Sec. 9.** That in any and all cases where an adhesive stamp shall be used for denoting any tax imposed by this Act, except as hereinafter provided, the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, so that the same may not again be used. And if any person shall fraudulently make use of an adhesive stamp to denote any tax imposed by this Act without so effectually canceling and obliterating such stamp, except as before mentioned, he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than fifty nor more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court: *Provided*, That any proprietor or proprietors of proprietary articles, or articles subject to stamp duty under Schedule B of this Act, shall have the privilege of furnishing, without expense to the United States, in suitable form, to be approved by the Commissioner of Internal Revenue, his or their own dies or designs for stamps to be used thereon, to be retained in the possession of the Commissioner of Internal Revenue, for his or their separate use, which shall not be duplicated to any other person. And the proprietor furnishing such dies or designs shall be required to purchase stamps printed therefrom in quantities of not less than two thousand dollars face value at any one time. That in all cases where such

stamp is used, instead of cancellation by initials and date, the said stamp shall be so affixed on the box, bottle, or package that in opening the same, or using the contents thereof, the said stamp shall be effectually destroyed; and in default thereof the party making default shall be liable to the same penalty imposed for neglect to affix said stamp as hereinbefore prescribed in this Act. Any person who shall fraudulently obtain or use any of the aforesaid stamps or designs therefor, and any person forging or counterfeiting, or causing or procuring the forging or counterfeiting, any representation, likeness, similitude, or colorable imitation of the said last-mentioned stamp, or any engraver or printer who shall sell or give away said stamps, or selling the same, or, being a merchant, broker, peddler, or person dealing, in whole or in part, in similar goods, wares, merchandise, manufactures, preparations, or articles, or those designed for similar objects or purposes, shall have knowingly or fraudulently in his, her, or their possession any such forged, counterfeited likeness, similitude, or colorable imitation of the said last-mentioned stamp, shall be deemed guilty of a crime, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year, or both.

1862 (July 1), § 99.

1864 (June 30), § 156.

The person executing the document is the one to affix the stamp, and he should cancel it; the other party can only cancel it with the assent of the maker.

(1867) *Myers v. Smith*, 48 Barb. 614.

Neglect to cancel stamp will not invalidate note.

(1867) *Ballard v. Burnside*, 49 Barb. 102,

(1870) *Union, etc., Assoc. v. Neill*, 31 Iowa 95.

(1881) *Dowell v. Applegate*, 7 Sawyer, 232, 7 Fed. R. 881.

Or make it inadmissible as evidence.

(1872) *Browne v. Bennett*, 24 La. Ann. 618.

(1872) *Doffin v. Guyer*, 39 Ind. 215.

(1870) *Patterson v. Gile*, 1 Col. T. 200.

(1868) *Adams v. Dale*, 29 Ind. 273.

The mere failure to cancel a stamp will not prevent the use of an instrument as evidence.

(1870) *Jacobs v. Cunningham*, 32 Tex. 774.

A stamp is duly canceled if it is defaced so that it cannot be reused.

(1870) *Taylor v. Duncan*, 33 Tex. 440.

The question of cancellation is one of fact for the jury.

(1870) *Rees v. Jackson*, 64 Pa. St. 486.

(1869) *U. S. v. Brown, Deady*, 566

Either party to a contract may affix the stamp. See

(1868) *Adams v. Dale*, 29 Ind. 273.

(1865) *Teagarden v. Garver*, 24 Ind. 399.

An innocent omission to cancel the stamps is no ground of defense to a note.

(1865) *Desmond v. Allen*, 10 Allen, 250.

Failure duly to cancel a stamp incurs a fine of ten pounds under the English Act (§ 8). Our Act of 1864, § 156, had penalty of \$50 if intent was fraudulent.

Where stamps on a note were not canceled until the trial of an action to enforce collection, and then the initials of the party were not used, it was yet held sufficient. The court said: "When it is known that there may be large numbers of persons all over the country who might be unable to do this in consequence of a want of sufficient education, or other defects that the party himself could not remedy, it can hardly be supposed that Congress intended to obstruct and defeat the citizen's most important right — the right of making contracts — by such *minutiæ*, when the proper tax had been paid, and the law substantially complied with."

(1873) *Foster v. Holley's Admin.*, 49 Ala. 593.

When a paper is to become the property of another on delivery, and only then is the transaction complete, the person to whom the paper is delivered may affix and cancel the stamps.

(1868) *Cedar Rapids etc., R. R. Co. v. Stewart*, 25 Iowa, 115.

*Note.* — The Commissioner of Internal Revenue has power to prescribe such method of cancellation of stamps as substitute for or in

addition to the method prescribed by law as he may deem expedient. See section 25.

That the initial and date method of cancellation is not absolutely obligatory is seen from the approved method of printing the revenue stamp upon checks, etc., so that the ordinary writing on the paper will cancel it. 9 I. R. R. 162.

Cancellation:

See §§ 156, 157, Act June 30, 1864.

The Commissioner authorized the initials and date to be imprinted instead of written.

See Circular No. 39, Jan. 16, 1866, Collection 1871, p. 79, warning against certain insufficient and improper methods.

The Commissioner later authorized the use of various mechanical contrivances.

Circular No. 82, and supplements, Feb. 10, 1870 *et seq.*, Collection 1871, p. 126.

As to cancellation of stamps in court, see notes to section 14.

Sale of proprietary stamps on credit.

(1880) U. S. *v.* Goldback, 102 U. S. 623.

## OMITTING STAMP FROM NEGOTIABLE INSTRUMENT.

**Sec. 10.** That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, or shall accept or pay, or cause to be accepted or paid, with design to evade the payment of any stamp tax, any bill of exchange, draft, or order, or promissory note for the payment of money, liable to any of the taxes imposed by this Act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax hereby charged thereon, he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars, at the discretion of the court.

1862 (July 1), § 100.

1866 (July 13), ch. 184.

1864 (June 30), § 158.

U. S. R. S., 1878, § 3422.

These old acts provided for a forfeiture of \$50 as a penalty and



made the instrument invalid. But the new act in this section makes it a misdemeanor and says nothing about invalidity.

(See note to section 7.)

In the plentiful litigation which grew out of the old acts both the forfeiture and the invalidity of the instrument were made to turn on the same question, *i. e.*, the omission of the stamp *with intent to evade the act*. Even if the question of validity be eliminated, the question of intent will remain to be met.

(See notes to section 14.)

A long line of cases held that the intention of Congress was simply to provide a penalty for the offense against the revenue, and under the old acts this offense must be clearly proven before the penalty would be inflicted or the instrument invalidated. Congress now makes, in this section, no attempt to invalidate the instrument, but it retains the invalidity provision in section 13, and in sections 7 and 14 makes the document inadmissible in evidence, while it now very properly leaves the offense to be dealt with as a misdemeanor, *i. e.*, by criminal procedure, rather than by forfeiture.

No English statute ever went so far as our early acts in declaring instruments generally to be void (Tilsley's Stamp Laws, p. 289), unless stamped. Under the British Acts omission can be corrected and the required stamps may be affixed at almost any time upon payment of prescribed penalties (13 & 14 Vict., c. 97, § 12), for the purpose of the law "was only to secure the duty to the Crown, and not to take away any evidence from the parties." (Cited by Edwards on Stamp Act, p. 12.) But this is not true of bills and notes, shipping, insurance, etc., where a failure to use the proper stamps at the proper time cannot be corrected..

See Tilsley, pp. 5, 8, 54, 154, 188, and cases cited.

(1834) *Rex v. Preston*, 3 N. & M. 31, 5 B. & Ad. 1028.

A subsequent holder in good faith for value is not affected by original failure to stamp a note.

(1871) *Sperry v. Horr*, 32 Iowa, 184.

(1870) *Robinson v. Law*, 31 Id. 9.

## FOREIGN BILLS OF EXCHANGE.

**Sec. 11.** That the acceptor or acceptors of any bill of exchange or order for the payment of any sum of money drawn, or purporting to be drawn, in any foreign coun-

try, but payable in the United States, shall, before paying or accepting the same, place thereupon a stamp, indicating the tax upon the same, as the law requires for inland bills of exchange or promissory notes; and no bill of exchange shall be paid or negotiated without such stamp; and if any person shall pay or negotiate, or offer in payment, or receive or take in payment, any such draft or order, the person or persons so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, in the discretion of the court.

1862 (July 1), 101.

1864 (June 30), § 159.

Lord Mansfield is cited in support of a maxim that the courts will not take notice of the revenue laws of a foreign state.

(1775) *Holman v. Johnson*, 1 Cowper, 341.

We may refuse to go into the question of whether a bill of exchange before our courts has been properly stamped in Europe, but clearly we cannot ignore at least the English law of revenue stamps, for our own is too largely drawn from it.

See also:

(1823) *James v. Catherwood*, 3 Dowling & Ryland, 190.

(1806) *Ludlow v. Van Rensselaer*, 1 J. R. (N. Y.) 96.

Tilsley's Stamp Laws, 301.

Collins on the Stamp Laws, 440, *et seq.*

### DISTRIBUTION OF STAMPS.

**Sec. 12.** That in any collection district where, in the judgment of the Commissioner of Internal Revenue, the facilities for the procurement and distribution of adhesive stamps are or shall be insufficient, the Commissioner, as aforesaid, is authorized to furnish, supply, and deliver to the collector of any district, and to any assistant treasurer of the United States or designated depository thereof, or any postmaster, a suitable quantity of adhesive stamps,

without prepayment therefor, and may in advance require of any collector, assistant treasurer of the United States, or postmaster a bond, with sufficient sureties, to an amount equal to the value of the adhesive stamps which may be placed in his hands and remain unaccounted for, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand. And it shall be the duty of such collector to supply his deputies with, or sell to other parties within his district who may make application therefor, adhesive stamps, upon the same terms allowed by law or under the regulations of the Commissioner of Internal Revenue, who is hereby authorized to make such other regulations, not inconsistent herewith, for the security of the United States and the better accommodation of the public, in relation to the matters hereinbefore mentioned, as he may judge necessary and expedient. And the Secretary of the Treasury may from time to time make such regulations as he may find necessary to insure the safe-keeping or prevent the illegal use of all such adhesive stamps.

1862 (July 1), § 102.

1864 (June 30), § 170.

Sale of stamps on credit.

(1880) U. S. *v.* Goldback, 102 U. S. 623.

**INSTRUMENTS TO BE STAMPED BEFORE REGISTRATION,  
SALE, ETC.: PENALTY AND REMISSION: POST-STAMPING.**

**Sec. 13.** That any person or persons who shall register, issue, sell, or transfer, or who shall cause to be issued, registered, sold, or transferred, any instrument, document, or paper of any kind or description whatsoever mentioned in Schedule A of this Act, without the same

being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and canceled in the manner required by law, with intent to evade the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court; and such instrument, document, or paper, not being stamped according to law, shall be deemed invalid and of no effect: *Provided*, That hereafter, in all cases where the party has not affixed to any instrument the stamp required by law thereon at the time of issuing, selling, or transferring the said bonds, debentures, or certificates of stock or of indebtedness, and he or they, or any party having an interest therein, shall be subsequently desirous of affixing such stamp to said instrument, or, if said instrument be lost, to a copy thereof, he or they shall appear before the collector of internal revenue of the proper district, who shall, upon the payment of the price of the proper stamp required by law, and of a penalty of ten dollars, and, where the whole amount of the tax denoted by the stamp required shall exceed the sum of fifty dollars, on payment also of interest, at the rate of six per centum, on said tax from the day on which such stamp ought to have been affixed, affix the proper stamp to such bond, debenture, certificate of stock or of indebtedness or copy, and note upon the margin thereof the date of his so doing, and the fact that such penalty has been paid; and the same shall thereupon be deemed and held to be as valid, to all intents and purposes, as if stamped when made or issued: *And provided further*, That where it shall appear to said collector, upon oath or otherwise, to his satisfaction, that any such instrument has not been duly stamped, at the

time of making or issuing the same, by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States of the stamp, or to evade or delay the payment thereof, then and in such case, if such instrument, or, if the original be lost, a copy thereof, duly certified by the officer having charge of any records in which such original is required to be recorded, or otherwise duly proven to the satisfaction of the collector, shall, within twelve calendar months after the making or issuing thereof, be brought to the said collector of internal revenue to be stamped, and the stamp tax chargeable thereon shall be paid, it shall be lawful for the said collector to remit the penalty aforesaid and to cause such instrument to be duly stamped. And when the original instrument, or a certified or duly proven copy thereof, as aforesaid, duly stamped so as to entitle the same to be recorded, shall be presented to the clerk, register, recorder, or other officer having charge of the original record, it shall be lawful for such officer, upon the payment of the fee legally chargeable for the recording thereof, to make a new record thereof, or to note upon the original record the fact that the error or omission in the stamping of said original instrument has been corrected pursuant to law; and the original instrument or such certified copy, or the record thereof, may be used in all courts and places in the same manner and with like effect as if the instrument had been originally stamped: *And provided further*, That in all cases where the party has not affixed the stamp required by law upon any such instrument issued, registered, sold, or transferred at a time when and at a place where no collection district was established, it shall be lawful for him or them, or any party having an interest therein, to affix the proper stamp thereto, or, if

the original be lost, to a copy thereof. But no right acquired in good faith before the stamping of such instrument, or copy thereof, as herein provided, if such record be required by law, shall in any manner be affected by such stamping as aforesaid.

1866 (July 13), ch. 184, pp. 142-3.

This section is a piece of very bad legislation. Down to the words "*Provided*, etc." it is a penal prohibition against registering, etc., any documents mentioned in Schedule A, and thus belongs to the series of prohibitions and penalties as above noted. (See p. 23.) Beginning with the word "*Provided*," it is taken, with some change from the amendment of 1866 (ch. 184, pp. 142-3), to § 158 of the Act of 1864. That act was amended to enable the holder, etc., of "any instrument" to go before the collector and correct an innocent failure to affix stamps. This present act would seem to have embodied these words with the same laudable intention of affording means of relief against innocent mistake or ignorance, but the whole intent (if such it was) has been destroyed by substituting the words "bonds, debentures or certificates of stock or of indebtedness" in line 18 of the section for the words "any instrument" of the old act. These words appear again in line 30 of the section, and they are so employed as to control the whole proviso; so that it will be seen that only *bonds, debentures, certificates of stock or of indebtedness* may be post-stamped by the collector, and these only within one year of the issuing, etc.

That such could not have been the intention of Congress is too plain for argument.

The first proviso refers to "*said* bonds, etc.," whereas bonds and the like are not in fact mentioned in the preceding text of the section.

The "any such instrument" of the second proviso originally meant *any instrument*, and thus included such as might require recording with a clerk, register or recorder, but this clearly would not be true of bonds, debentures and certificates of stock. The whole section is a hopeless patchwork and demands speedy correction.

Assuming, then, that this section will promptly be amended to conform to the old act, the following cases are cited:

The person to appear before the collector is the one who should have affixed the stamp.

(1868) *Myers v. Smith*, 48 Barb. 614.

*Contra*, (1869) *Schermerhorn v. Burgess*, 55 Barb. 422.

The *only* way, out of court, to cure defect of stamp is to appear before the collector; but when the point arises in court, proof that the omission is not by fraudulent intent, accompanied by an offer to comply with the law, will enable the court to receive it in evidence.

(1866) *Beebe v. Hutton*, 47 Barb. 187.

As to post-stamping and remitting penalties in case of accident or mistake, see

(1868) *Peoria Ins. Co. v. Perkins*, 16 Mich. 380.

(1868) *McAfferty v. Hale*, 24 Iowa, 355.

(1867) *Brown v. Crandal*, 23 Iowa, 112.

After Jan. 1, 1867, the only person empowered to affix an omitted stamp was the collector of the district.

(1871) *Mobile, etc., R. Co. v. Edwards*, 46 Ala. 267.

(1871) *Corrie v. Billin*, 23 La. Ann. 250.

A special term of the Superior Court of the City of N. Y. dismissed a suit on an instrument in the nature of a mortgage on the ground that it was void for want of a proper stamp.

(1865) *Hoppock v. Plato*, 30 How. Pr. 120.

Under the Act of 1864, an omitted stamp may not be attached in open court to enable a promissory note to be used in evidence. The stamp must be affixed by a revenue officer under § 158 of the act.

(1869) *Wigham v. Pickett*, 43 Ala. 140.

The validity of a contract cannot be impugned for want of a stamp after the omission has been supplied by a revenue officer under the provisions of the law.

(1870) *Logan v. Dils*, 4 W. Va. 397.

And see (1870) *Hetzell v. Gregory*, 7 Phil. (Pa.) 148.

(1871) *Browne v. Steck*, 2 Col. 70.

Admissible as evidence are instruments originally unstamped, but subsequently post-stamped under act of Congress.

(1867) *Cooke v. England*, 27 Md. 14.

(1867) *Corbin v. Tracy*, 34 Conn. 325.

(1867) *Knox v. Hindesoper*, 21 Wis. 527.

(1866) *Tobey v. Chipman*, 13 Allen (Mass.) 123.

(1866) *Patterson v. Eames*, 54 Me. 203.

(1866) *Beebe v. Hutton*, 47 Barb. 187.

(1866) *Dorris v. Grace*, 24 Ark. 326.

(1865) *Carpenter v. Johnson*, 1 Nev. 331.

(1865) *Plessinger v. Dupuy*, 25 Ind. 419.

(1865) *Day v. Barker*, 36 Mo. 125.

In a partition suit plaintiff's counsel supplied the omitted stamps on the trial and the referee cancelled them. The Court of Appeals, affirming the judgment, said: "Without denying that it is within the power of taxation conferred upon it for Congress to lay an excise tax upon the business operations of communities, and to collect that tax by the means of stamps, to be placed upon the written instruments exchanged between contracting parties, and to enforce the observance of the law to that end by the imposition in it of penalties for its non-observance, we are of the opinion that it is without that power to declare that a contract or conveyance between citizens of a State, affecting the title to real estate, is void, for the reason that such observance has been omitted. Apart, then, from any consideration of the sufficiency of the stamping and the canceling which took place before the referee, we think that these deeds were valid, and passed to the plaintiff an estate in fee simple."

(1872) *Moore v. Moore*, 47 N. Y. 467.

*Curing defects.*

Unstamped instruments cannot be helped by any sort of consent between parties.

(1834) *Owen v. Thomas*, 3 Mylne & Keene, 353.

Such an attempt is regarded as a combination to defraud the revenue. The courts have frequently frowned upon it.

(1848) *Bennison v. Jewison*, 12 Jur. 485.

(1815) *Abraham v. Dubois*, 4 Campbell, 269.

As to when a stamp may be affixed.

(1871) *Myers v. McGraw*, 5 W. Va. 30 (action on bond).

As to what kind of a copy may be stamped in lieu of an original instrument.

(1876) *Miller v. Wentworth*, 82 Pa. St. 280.

The Stamp Act of 1862 took effect Oct. 1, and instruments executed and delivered before that date, though recorded afterwards, were not chargeable. Provision was made (§ 163, Act 1864), for post-stamping instruments issued prior to Aug. 1, 1864, in the presence of the court or register. After Aug. 1, 1864, an instrument could be post-stamped only by the collector. The stamp to be affixed was that required by the law at the time of the execution.

Circular No. 43, March 16, 1866, Collection 1871, p. 86.



**INSTRUMENT NOT EVIDENCE UNTIL STAMPED.**

**Sec. 14.** That hereafter no instrument, paper, or document required by law to be stamped, which has been signed or issued without being duly stamped, or with a deficient stamp, nor any copy thereof, shall be recorded or admitted, or used as evidence in any court until a legal stamp or stamps, denoting the amount of tax, shall have been affixed thereto, as prescribed by law: *Provided*, That any bond, debenture, certificate of stock, or certificate of indebtedness issued in any foreign country shall pay the same tax as is required by law on similar instruments when issued, sold, or transferred in the United States; and the party to whom the same is issued, or by whom it is sold or transferred, shall, before selling or transferring the same, affix thereon the stamp or stamps indicating the tax required.

Act of 1864 (June 30), § 163.

Act of 1866, ch. 184.

**ADMITTED IN EVIDENCE.****Congress can not Make Rules of Evidence for State Courts.**

A stamp was omitted from a promissory note, through sheer forgetfulness or ignorance, but was affixed by payee before suit brought. Held admissible. The court said: "While we concede to the Congress the power to lay and collect taxes, duties, imposts and excises to pay the debts of the Union, we deny its power to go into the States and under the pretense of laying and collecting such taxes take away from the States legitimate and long-established rights which they have ever, and for their own preservation must be allowed to exercise without question."

(1867) *Latham v. Smith*, 45 Ill. 29.

And see (1872) *Moore v. Moore*, 47 N. Y. 467 (cited more fully at p. 38, *ante*).

Congress can punish a violation or an evasion of the stamp law, but it is for each State to determine the rules of evidence in its own courts. Therefore, while the federal act applies to federal courts, it cannot forbid the reception of an unstamped instrument in a State court.

- (1868) *Craig v. Dimock*, 47 Ill. 308.  
(1869) *Clemens v. Conrad*, 19 Mich. 170.  
(1870) *Spooner v. Eifler*, 1 Heisk. (Tenn.) 633.  
(1870) *Moore v. Quirk*, 105 Mass. 49.  
(1870) *Bumpass v. Faggart*, 26 Ark. 398.  
(1870) *Wallace v. Craven*, 34 Ind. 534.  
(1871) *Davis v. Richardson*, 45 Miss. 499.  
*Contra*, (1865) *Plessinger v. Dupuy*, 25 Ind. 419.  
(1872) *Chartiers, etc., Co. v. McNamara*, 72 Pa. 278.

It may be read in evidence, although the stamp is uncanceled.

- (1871) *Patterson v. Gile*, 1 Col. Ter. 200.  
(1865) *Goodwine v. Wands*, 25 Ind. 101.

The federal act, so far as it prescribed a rule of evidence, was operative only in the federal courts.

- (1870) *Peo. ex rel. Barbour v. Gates*, 43 N. Y. 40.  
(1867) *Carpenter v. Snelling*, 97 Mass. 452.  
(1870) *Duffy v. Hobson*, 40 Cal. 240.  
(1870) *Dailey v. Coker*, 33 Texas, 815.

When a stamp has been omitted by ignorance, it may be affixed later, when the need of it has been ascertained.

- (1868) *Green v. Lowry*, 38 Ga. 548.  
(1866) *Tobey v. Chipman*, 13 Allen 123.  
(1867) *Tripp v. Bishop*, 56 Pa. 424.

But after the payee is dead, the maker cannot supply an omitted stamp, and even if he does so, he can defend on ground of invalidity for lack of stamp when note was made.

- (1868) *Weyman v. Torreyson*, 4 Nev. 124.  
(1866) *Maynard v. Johnson*, 2 Nev. 16.

But see (1870) *Mercer v. Mercer*, 29 Iowa, 557 (as to a deed).

An unintentional omission to stamp a promissory note may be corrected by an authorized attorney holding the note.

- (1870) *Vaughan v. O'Brien*, 39 How. Pr. 515.  
(1867) *Blunt v. Bates*, 40 Ala. 470.

An omitted stamp may be affixed in open court to a note for use as evidence.

- (1865) *Garland v. Lane*, 46 N. H. 245.  
(1870) *Morris v. McMorris*, 44 Miss. 441.  
(1872) *Waterbury v. McMillan*, 46 Miss. 635.  
(1870) *Janvrin v. Fogg*, 46 N. H. 340.

So in England:

(1834) *Beckwith v. Benner*, 6 Carrington & Payne, 681.

Indeed decrees in chancery have been kept back to afford time for supplying the stamps.

(1822) *Chervet v. Jones*, 6 Mad. 267.

(1834) *Owen v. Thomas*, 3 Mylne & Keen, 353.

See English Stamp Act of 1891, ch. 39, § 14.

### INTENT — INVALIDATE.

The courts repeatedly and in many States held that the neglect duly to stamp an instrument must be fraudulent to invalidate it. A New York court manifested impatience at being called upon to reassert a rule so well established.

(1869) *Frink v. Thompson*, 4 Lansing, 489.

(1872) *Baker v. Baker*, 6 Lansing, 509 (citing cases and discrediting some early decisions pointing the other way).

On the necessity of showing fraudulent intent, see

(1867) *Vorebeck v. Roe*, 50 Barb. 302.

(1869) *Howe v. Carpenter*, 53 Barb. 382.

(1870) *Vaughan v. O'Brien*, 57 Barb. 491; s. c. 39 How. Pr. 515.

(1869) *Green v. Holway*, 101 Mass. 243.

(1867) *Holyoke M. Co. v. Franklin P. Co.*, 97 Mass. 150.

(1866) *Beebe v. Hutton*, 47 Barb. 187.

(1866) *Baird v. Pridmore*, 31 How. Pr. 359.

(1870) *Morris v. McMorris*, 44 Miss. 441.

(1869) *Whitehill v. Shickle*, 43 Mo. 537.

(1866) *Dorris v. Grace*, 24 Ark. 326.

(1866) *Govern v. Littlefield*, 13 Allen, 127.

(1870) *Rheinstrom v. Cone*, 26 Wis. 163.

(1871) *Brown v. Thompson*, 59 Me. 372.

(1869) *Weltner v. Riggs*, 3 W. Va. 445.

(1867) *Hallock v. Jaudin*, 34 Cal. 167.

(1872) *Works v. Hershey*, 35 Iowa, 340.

(1872) *Morgan v. Graham*, 35 Iowa, 213.

(1873) *Emery v. Hobson*, 63 Me. 33.

(1874) *Perryman v. Greenville*, 51 Ala. 507.

(1874) *Oxford Iron Co. v. Spradley*, 51 Ala. 171.

(1867) *Hitchcock v. Sawyer*, 39 Vt. 412.

(1865) *Corry Nat. Bk. v. Rouss*, 3 Pittsb. 18.

(1872) *Timp v. Dockham*, 29 Wis. 440.

(1872) *State v. Hile*, 30 Wis. 416.

(1867) *Harper v. Clark*, 17 Ohio St. 190.

(1867) *Dudley v. Wells*, 55 Me. 145.

The burden of proof of showing the intent to be fraudulent is on the person objecting to the offer in evidence.

(1869) *N. H., etc., Co. v. Quintard*, 31 How. Pr. 29; s. c. 6 Abb. Pr. N. S. 128; 1 *Sweeny*, 89 (which contains a full discussion).

(1871) *Ricord v. Jones*, 33 Iowa, 26.

The ground of objection must be that the omission was with intent to defraud the government.

(1869) *Quinn v. Lloyd*, 1 *Sweeny*, 253.

The severity of the Act of 1 July, 1862, which declared unstamped instruments to be invalid, was mitigated by the Act of 14 July, 1862, providing that an instrument issued unstamped before 1st Jan. 1863, should not be invalid, but must be stamped and a penalty of \$5 be paid before it could be used as evidence. The Act of 25th Dec., 1862, again amended the law as to instruments issued unstamped before 1 Mch., 1863, which are not to be invalid, but must be stamped before being used as evidence, and this could be done in court. The Act of 3 Mch., 1863, further extended the time from 1 Mch., 1863, to 1 June, 1863.

This leniency was shown because of the known lack of stamps during the early months of the system. It may be that some such enabling acts will be required to prevent hardship under the new law. But the necessity will depend upon the determination of the questions raised at pages 34, 37, 24, concerning the invalidity provision of the law.

The stamp is no part of the note. In order to defeat a recovery on an unstamped note, it must appear not only that the note is unstamped, but that the stamp has been fraudulently omitted, which, of course, cannot be done on demurrer, but must be done by answer.

(1867) *Hallock v. Jaudin*, 34 Cal. 167.

(1866) *Trull v. Moulton*, 12 Allen (Mass.) 396.

Stamp no part of a note and need not appear on the record of an appeal.

(1872) *Owsley v. Greenwood*, 18 Minn. 429.

(1871) *Prather v. Tulauf*, 38 Ind. 155.

(1871) *Cabbott v. Radford*, 17 Minn. 320.

Where certified copy of a mortgage is offered in evidence the pre-

sumption is that the recording officer required the necessary stamps to be affixed.

(1872) *Grand v. Cox*, 24 La. Ann. 462.

That an instrument is "void and of no effect" does not mean that the contract is "invalid."

(1868) *McAfferty v. Hale*, 24 Iowa, 355.

The original obligation may be enforced, although the written contract is not received in evidence.

(1795) *Wilson v. Kennedy*, 1 Esp. 245.

(1808) *Brown v. Watts*, 1 Taunt. 353.

(1868) *Wilson v. Carey*, 40 Vt. 179.

(1866) *Israel v. Redding*, 40 Ill. 362.

(1866) *Jacquin v. Warren*, 40 Ill. 459.

(1868) *Weyman v. Torreyson*, 4 Nev. 124.

An unstamped paper not the basis of the action may be offered in evidence, not to establish a liability, but to prove a collateral fact.

(1870) *Hellman v. Reis*, 1 Cin. Super. Ct. Rep'r, 30, affirmed in (1874) *Reis v. Hellman*, 25 Ohio St. 180.

See (1849) *Matheson v. Ross*, 2 House of Lords' Cas. 286.

The law does not compel persons to reduce their agreements to writing, and oral evidence may even be used to establish a contract which has been written, provided it does not appear in evidence that the witness knew of the writing.

(1841) *Collins on The Stamp Laws* (Eng.), p. 22, and citations.

The wrongful destruction of an unstamped instrument by the person against whom it might have been used does not open the way to parol proof of its contents.

(1819) *Rippiner v. Wright*, 2 B. & Ald. 479.

In England, both under old cases and modern express statute, an unstamped instrument may be admitted in any criminal proceeding.

(1783) *Rex v. Hawkeswood*, 1 Leach, Cro. Ca. 257; 2 East, Pleas of the Crown, 955; 17 & 18 Vict., c. 83, § 27.

And in civil cases an instrument not duly stamped formerly might be used for a collateral purpose. Thus, in an action for money lent an alleged note was admitted to prove by its appearance that it was written by a drunken man, the defense being fraud.

(1814) *Gregory v. Fraser*, 3 Camp. 454. See (1838) *Coppock v. Bower*, 4 M. & W. 36. *Contra*, present rule, (1891) *Ashling v. Boon*, 1 Ch. 568.

**RECORD OF UNSTAMPED INSTRUMENT NOT EVIDENCE.**

**Sec. 15.** That it shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law; and the record, registry, or transfer of any such instruments upon which the proper stamp or stamps aforesaid shall not have been affixed and canceled as aforesaid shall not be used in evidence.

1864 (June 30), § 152.

1866 (July 13), p. 141, ch. 184.

The Act of 1866 added cancellation to the requirement. The words "shall be utterly void," which were in the Acts of 1864, 1866, were dropped, and the present section retains only the penalty of incompetence as evidence.

The record of a mortgage that was insufficiently stamped is not admissible against third parties; and a subsequent stamping before the collector will not cure the defect so as to divest intervening interests.

(1867) *McBride v. Doty*, 23 Iowa, 122.

A chattel mortgage, being merely filed and not recorded, held under the circumstances not to require a stamp.

(1867) *Vail v. Knapp*, 49 Barb. 299.

But note that Schedule A taxes chattel mortgages.

Where a certified copy of a mortgage is offered in evidence, it will be presumed that the recording officer required the proper stamps to be attached.

(1872) *Grand v. Cox*, 24 La. Ann. 462.

**KIND OF DOCUMENTARY STAMP NOT ESSENTIAL.**

**Sec. 16.** That no instrument, paper, or document required by law to be stamped shall be deemed or held invalid and of no effect for the want of a particular kind or description of stamp designated for and denoting the tax charged on any such instrument, paper, or document, provided a legal documentary stamp or stamps denoting

a tax of equal amount shall have been duly affixed and used thereon.

1864 (June 30), § 153.

This was held by a former Commissioner to permit the indiscriminate use of all kinds of stamps.

Note that a *documentary* stamp must be used. This word takes the place of a special proviso in the corresponding section (§153) of the Act of 1864, that proprietary stamps are not to be used.

And see Circular No. 20, Aug. 1, 1864, Collection 1871, pp. 43, 45.

#### GOVERNMENT AND LOCAL SECURITIES EXEMPT: ALSO BUILDING AND LOAN ASSOCIATIONS.

**Sec. 17.** That all bonds, debentures, or certificates of indebtedness issued by the officers of the United States government, or by the officers of any State, county, town, municipal corporation, or other corporation exercising the taxing power, shall be, and hereby are, exempt from the stamp taxes required by this Act: *Provided*, That it is the intent hereby to exempt from the stamp taxes imposed by this Act such State, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing, or municipal capacity: *Provided further*, That stock and bonds issued by cooperative building and loan associations whose capital stock does not exceed ten thousand dollars, and building and loan associations or companies that make loans only to their shareholders, shall be exempt from the tax herein provided.

1864 (June 30), § 154.

1866 (July 13), ch. 184.

U. S. R. S. 1878, § 3420.

A tax deed, given by a State, is exempt.

(1867) Sayles *v.* Davis, 22 Wis. 225.

(1869) Delorme *v.* Ferk, 24 Wis. 201.

So is order by County Commissioners.

(1866) *Nave v. King*, 27 Ind. 356.

A sheriff's official bond requires no stamp.

(1869) *State v. Garton*, 32 Ind. 1.

As to a bill of exchange to which the U. S. government is a party.

(1818) *Dugan v. U. S.*, 3 Wheat. 172.

(1827) *U. S. v. Barker*, 12 Id. 559.

(1844) *U. S. v. Bank*, 2 Howard, 711.

(1841) *U. S. v. Bank*, 15 Peters, 392.

But although this section omits some words that are in R. S., § 3420, government instruments will doubtless be liberally exempted.

The Act of Dec. 23, 1862, exempted official instruments, documents and papers, etc., of U. S. as well as bonds.

### TELEGRAPH DISPATCHES.

**Sec. 18.** That on and after the first day of July, eighteen hundred and ninety-eight, no telegraph company or its agent or employee shall transmit to any person any dispatch or message without an adhesive stamp, denoting the tax imposed by this Act, being affixed to a copy thereof, or having the same stamped thereupon, and in default thereof shall incur a penalty of ten dollars: *Provided*, That only one stamp shall be required on each dispatch or message, whether sent through one or more companies: *Provided*, That the messages or dispatches of the officers and employees of any telegraph or telephone company concerning the affairs and service of the company, and like messages or dispatches of the officials and employees of railroad companies sent over the wires on their respective railroads shall be exempt from this requirement: *Provided further*, That messages of officers and employees of the government on official business shall be exempt from the taxes herein imposed upon telegraphic and telephonic messages.

See Act of 1862 (July 1), § 104. Not found in Act of 1864 (June 30).



**PROVISIONS OF THIS ACT MADE APPLICABLE TO  
SCHEDULE B.**

**Sec. 19.** That all the provisions of this Act relating to dies, stamps, adhesive stamps, and stamp taxes shall extend to and include (except where manifestly inapplicable) all articles or objects enumerated in Schedule B, subject to stamp taxes, and apply to the provisions in relation thereto.

Act of 1862 (July 1, 1862), § 106.

Act of 1864 (June 30, 1864), § 164.

That all stamps denoting duties under Schedules B and C of the Law of 1864 might be used indiscriminately in the respective schedules, see § 153 of the Act, and Circular No. 20, Aug. 1, 1864, Collection 1871, pp. 43, 45.

**MANUFACTURE AND PREPARATION OF MEDICINES, PERFUMERIES, ETC.**

**Sec. 20.** That on and after the first day of July, eighteen hundred and ninety-eight, any person, firm, company, or corporation that shall make, prepare, and sell, or remove for consumption or sale, drugs, medicines, preparations, compositions, articles, or things, including perfumery and cosmetics, upon which a tax is imposed by this Act, as provided for in Schedule B, without affixing thereto an adhesive stamp or label denoting the tax before mentioned shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court: *Provided*, That no stamp tax shall be imposed upon any uncompounded medicinal drug or chemical, nor upon any medicine sold to or for the use of any person which may be mixed or compounded for said person according to the written recipe or prescription of any

practicing physician or surgeon, or which may be put up or compounded for said person by a druggist or pharmacist selling at retail only. The stamp taxes provided for in Schedule B of this Act shall apply to all medicinal articles compounded by any formula, published or unpublished, which are put up in style or manner similar to that of patent, trade-mark, or proprietary medicine in general, or which are advertised on the package or otherwise as remedies or specifics for any ailment, or as having any special claim to merit, or to any peculiar advantage in mode of preparation, quality, use, or effect.

Act of 1862 (July 1, 1862), § 107.

Act of 1864 (June 30, 1864), § 165.

R. S. U. S. 1878, §§ 3430, 3436.

No reference is made to intent, and, if the burden of identifying and distinguishing the things taxed is to rest upon the taxpayer, this will be found to be a severe enactment. Note *e. g.* such designations in Schedule B. as "other similar articles," "substitutes," etc., besides the difficulty of accurately defining many of the articles scheduled.

An indictment will lie, under the Act of 1866, § 9 (14 Stat. 145), for selling a box of sardines, without affixing thereto the proper stamp.

1st Circ., Mass. (1869) U. S. *v.* Abbott, 9 I. R. R. 186.

Sufficiency of indictment and evidence to warrant conviction for penalty under Act of 1864.

(1882) U. S. *v.* Moore, 11 Fed. Rep. 248.

As to action to recover penalty under Act of 1864 for selling matches without stamps, see

(1867) U. S. *v.* Walsh, 1 Abb. U. S. 66.

## ILLEGAL USE OF PROPRIETARY STAMPS.

**Sec. 21.** That any manufacturer or maker of any of the articles for sale mentioned in Schedule B, after the same shall have been so made, and the particulars hereinbefore required as to stamps have been complied with, or any other person who shall take off, remove, or detach, or

cause, or permit, or suffer to be taken off, or removed or detached, any stamp, or who shall use any stamp, or any wrapper or cover to which any stamp is affixed, to cover any other article or commodity than that originally contained in such wrapper or cover, with such stamp when first used, with the intent to evade the stamp duties, shall for every such article, respectively, in respect of which any such offense shall be committed, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court, and every such article or commodity as aforesaid shall also be forfeited.

Act of 1862 (July 1, 1862), § 108.

Act of 1864 (June 30, 1864), § 166.

R. S. U. S., § 3431.

There must be an intent to evade the stamp duties.

Sections 19-24 cover the duties and liabilities of manufacturers and sellers of articles in Schedule B.

In these sections, as in sections 7, 10, 13 and 14, this Act has omitted the "penalties" of the former Acts and has made offenses misdemeanors.

#### MISDEMEANORS.

*Section 20* makes the manufacture, preparation, and sale or removal for consumption or sale, of articles in Schedule B without affixing a stamp, *no mention of intent*, a misdemeanor, punishable by fine up to \$500 or six months, or both.

*Section 21* makes the removal, etc., of stamps already affixed, *with intent to evade the stamp duties*, a misdemeanor, punishable by fine up to \$500, or six months, or both.

*Section 22* makes the selling, removal or delivery, etc., of any article in Schedule B, *with intent to evade the tax*, a misdemeanor, punishable by fine up to \$500, or six months, or both.

*Section 23* makes the neglect or refusal of a manufacturer to file sworn monthly declaration punishable by forfeit of \$100, and makes a false declaration a misdemeanor, punishable by fine up to \$500, or six months, or both.

*Section 24* makes every person who sells or offers for sale any article in Schedule B, subject to all the taxes, liabilities and penalties imposed on the manufacturer.

#### EFFECT ON THE ARTICLE.

Wherever the law makes fraudulent intent an element, it provides for the forfeiture of the article upon conviction. (§§ 21, 22.)

A man may thus subject himself to a heavy penalty for manufacturing an article and failing to stamp it, although he has no intent to evade the law (see Schedule B, and note to § 20, as to looseness of definition), while he may escape the like penalty for selling the same article unstamped, unless it be shown that he sold it unstamped to evade the tax.

And in like manner an innocent failure to make a sworn monthly declaration by one who does not know that the article is taxable subjects him to a fine of \$100 each month.

#### SALE OR REMOVAL OF UNSTAMPED ARTICLES: EXPORTATION.

**Sec. 22.** That any maker or manufacturer of any of the articles or commodities mentioned in Schedule B, as aforesaid, or any other person who shall sell, send out, remove, or deliver any article or commodity, manufactured as aforesaid, before the tax thereon shall have been fully paid by affixing thereon the proper stamp, as in this Act provided, or who shall hide or conceal, or cause to be hidden or concealed, or who shall remove or convey away, or deposit, or cause to be removed or conveyed away from or deposited in any place, any such article or commodity, to evade the tax chargeable thereon, or any part thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court, together with the forfeiture of any such article or commodity: *Provided*, That articles upon which stamp taxes are required by this Act may, when intended for expor-

tation, be manufactured and sold or removed without having stamps affixed thereto, and without being charged with tax as aforesaid; and every manufacturer or maker of any article as aforesaid, intended for exportation, shall give such bonds and be subject to such rules and regulations to protect the revenue against fraud as may be from time to time prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Act of 1862 (July 1, 1862), § 109.

Act of 1864 (June 30, 1864), §§ 167 and 168, as amended by 3 Mch. 1865, § 1.

R. S. U. S. 1878, § 3433.

The proviso is a modification of § 168, Stat. 1864, *supra*, which permitted manufacturers to establish bonded warehouses for their goods intended for exportation and the old Rules and Regulations governing manufacturing warehouses as established by the Treasury Department are to be found at 9 I. R. R. 195.

As to exportation, drawbacks, etc., see notes under section 26, and (1873) U. S. v. 237 Boxes, 6 Ben. 543.

### SWORN MONTHLY DECLARATION OF MANUFACTURER.

**Sec. 23.** That every manufacturer or maker of any of the articles or commodities provided for in Schedule B, or his foreman, agent, or superintendent shall at the end of each and every month make, sign, and file with the collector of internal revenue for the district in which he resides a declaration in writing that no such article or commodity has, during such preceding month or time when the last declaration was made, been removed, or carried, or sent, or caused or suffered or known to have been removed, carried, or sent from the premises of such manufacturer or maker other than such as have been duly taken account of and charged with the stamp tax, on pain of such manufacturer or maker forfeiting for every refusal

or neglect to make such declaration one hundred dollars ; and if any such manufacturer or maker, or his foreman, agent, or superintendent, shall make any false or untrue declaration, such manufacturer or maker, or foreman, agent, or superintendent making the same shall be deemed guilty of a misdemeanor, and upon conviction shall pay a fine of not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

Act of 1862 (July 1, 1862), § 110.

Not found in Act of 1864.

This is not a report of a man's business, but is merely a sworn declaration of compliance with the law.

#### **DEALER IN DOMESTIC OR FOREIGN ARTICLES DEEMED MANUFACTURER: IMPORTS PAY DUTY AND STAMP TAX.**

**Sec. 24.** That the stamp taxes prescribed in this Act on the articles provided for in Schedule B, shall attach to all such articles and things sold or removed for sale on and after the said first day of July, eighteen hundred and ninety-eight. Every person, except as otherwise provided in this Act, who offers or exposes for sale any article or thing provided for in said Schedule B, whether the article so offered or exposed is of foreign manufacture and imported or of domestic manufacture, shall be deemed the manufacturer thereof, and shall be subject to all the taxes, liabilities, and penalties imposed by law for the sale of articles without the use of the proper stamp denoting the tax paid thereon ; and all such articles of foreign manufacture shall, in addition to the import duty imposed on the same, be subject to the stamp tax prescribed in this Act : *Provided further*, That internal revenue stamps required by existing law on imported merchandise shall be affixed thereto and canceled at the

expense of the owner or importer before the withdrawal of such merchandise for consumption, and the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary for the affixing and canceling of such stamps, not inconsistent herewith.

Act of 1863, ch. 74, § 27.

Act of 1864 (June 30), § 169.

R. S. U. S. 1878, § 3435.

When the act declares that dealers shall be treated as manufacturers under certain circumstances, it means that they shall be treated and held liable as manufacturers, even if they are not such in fact.

(1867) *Cardinel v. Smith*, Deady, 197.

#### **STAMPS: PREPARATION, DISTRIBUTION, METHODS OF CANCELLATION: RULES AND REGULATIONS.**

**Sec. 25.** That the Commissioner of Internal Revenue shall cause to be prepared for the payment of the taxes prescribed in this Act suitable stamps denoting the tax on the document, article, or thing to which the same may be affixed, and he is authorized to prescribe such method for the cancellation of said stamps, as substitute for or in addition to the method provided in this Act, as he may deem expedient. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to procure any of the stamps provided for in this Act by contract whenever such stamps cannot be speedily prepared by the Bureau of Engraving and Printing; but this authority shall expire on the first day of July, eighteen hundred and ninety-nine. That the adhesive stamps used in the payment of the tax levied in Schedules A and B of this Act shall be furnished for sale by the several collectors of internal revenue, who shall sell and deliver them at their face value to all persons applying for the same, except officers or employees of

the internal-revenue service: *Provided*, That such collectors may sell and deliver such stamps in quantities of not less than one hundred dollars of face value, with a discount of one per centum, except as otherwise provided in this Act. And he may, with the approval of the Secretary of the Treasury, make all needful rules and regulations for the proper enforcement of this Act.

Act of 1864 (June 30), §§ 161 and 170.

The R. S., provide in a general way the character of the stamps and the Secretary of the Treasury and the Commissioner of Internal Revenue may alter them, etc.

R. S., §§ 3395, 3445, 3446, 3324.

Under the old Acts the Bureau ruled that stamps of a smaller denomination in amount sufficient to equal the total required might be used on instruments. And the British Act so provides.

As to redemption of spoiled stamps, *vide* § 3426 R. S. There is a time limit. Under special regulations duplicate stamps are issued to replace those that are accidentally lost or destroyed. § 3315 R. S. See § 5 of this Act.

Commission on sale of stamps.

(1875) U. S. *v.* Cheesman, 21 Int. R. R. 340.

(1882) U. S. *v.* Fielding, 17 Fed. Rep. 572.

(1874) U. S. *v.* Butterfield, 7 Ben. 412.

Not followed in

(1877) Folger *v.* U. S., 13 Ct. of Cl. 86.

*Cancellation* : See § 9 of this Act.

The person affixing the stamp is the one to cancel it; the other party to the instrument can only do so with the assent of the party issuing the paper.

(1867) Myers *v.* Smith, 48 Barb. 614.

Banks and telegraph companies have very generally given notice that they would cancel the stamps on checks and telegrams when handed in uncanceled, assuming in this to act as agents for the drawer or sender, and such action on their part will doubtless be upheld as within the spirit of the act.



## SCHEDULE A.

### STAMP TAXES.

#### **BONDS, DEBENTURES OR CERTIFICATES OF INDEBTEDNESS: ORIGINAL ISSUES OF STOCK: SALES, DELIVERIES OR TRANSFERS OF STOCK.**

Bonds, debentures, or certificates of indebtedness issued after the first day of July, anno Domini eighteen hundred and ninety-eight, by any association, company, or corporation, on each hundred dollars of face value or fraction thereof, five cents, and on each original issue, whether on organization or reorganization, of certificates of stock by any such association, company, or corporation, on each hundred dollars of face value or fraction thereof, five cents. and on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or for the future transfer of any stock, on each hundred dollars of face value or fraction thereof, two cents: *Provided*, That in case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memo-

randum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. And any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale, or who shall, in pursuance of any such sale, deliver any such stock, or evidence of the sale of any such stock or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

#### Schedule A.

The wording of Schedule A is taken mainly from ch. 173 of 1864 (June 30, 1864).

#### Bonds, Debentures, or Certificates of Indebtedness.

There is no accurate definition of debenture to be found in dictionary or decision.

It is in the British Act of 1870 but is not there defined.

"The question in this case is not free from difficulty, owing to the fact that the word 'debenture' which has crept into the English language, does not appear to admit of any accurate definition. Neither have we been able to obtain any information as to the exact meaning of the word, for the dictionaries give only a very general definition. There is no doubt that the word is commonly used, but I do not think that I have ever known it to be used otherwise than to express an acknowledgment of a debt by either a corporate body or a large partnership."

(1881) *British India, etc., Co. v. Com'rs of Inland Rev.*, 7 Q. B. Div. 165.

The proviso in this paragraph is mainly taken from the Act of 1866, 14 Stat. 134, amending § 99 of the Act of 1864.

The scheme of this paragraph is as follows:

Bonds, debentures or certificates of indebtedness:

All corporate issues after July 1, 1898, pay 5c on \$100.

Certificates of stocks:

All issues on organization or reorganization, pay 5c on \$100.

Sales, memo. of sales, deliveries, transfers, etc.

(i. e. change of possession or ownership):

<p>{ If made only on books, stamp on books. If made on transfer of cert. by name, stamp on cert. If made by delivery of cert. in blank, stamp on bill, or memo. between buyer and seller.</p>	}	<p>pay 2 cents on \$100.</p>
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This memo. between buyer and seller is not the broker's memorandum, which must have a ten-cent stamp. See *post*, p. 68, *Contract*.

NOTE: The tax on buyer's and seller's memo. is on *face* values.

## SALE OF PRODUCTS AT EXCHANGE OR SIMILAR PLACE.

Upon each sale, agreement of sale, or agreement to sell, any products or merchandise at any exchange, or board of trade, or other similar place, either for present or future delivery, for each one hundred dollars in value of said sale or agreement of sale or agreement to sell, one cent, and for each additional one hundred dollars or fractional part thereof in excess of one hundred dollars, one cent: *Provided*, That on every sale or agreement of sale or agreement to sell as aforesaid there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps in value equal to the amount of the tax on such sale. And every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any

such sale or agreement of sale, or agreement to sell, or who shall, in pursuance of any such sale, agreement of sale, or agreement to sell, deliver any such products or merchandise without a bill, memorandum, or other evidence thereof as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

#### **Sales of Products on Exchange.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sch. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sch. B.

The former Acts required a stamp on any agreement or contract, but it is now confined to sales on exchange or board of trade. Hence most of the old decisions are inapplicable.

NOTE: The amount of tax is to be determined by the *value*.

Failure to comply with Act is a misdemeanor with severe penalties.

#### **BANK CHECK, SIGHT DRAFT, CERTIFICATE OF DEPOSIT OR ORDER.**

Bank check, draft, or certificate of deposit not drawing interest, or order for the payment of any sum of money, drawn upon or issued by any bank, trust company, or any person or persons, companies, or corporations at sight or on demand, two cents.

#### **Bank Check.**

Draft, certificate of deposit not drawing interest, or order for the payment of any sum of money (sight or demand.)

Ch. 119 of 1862 (July 1, 1862), § 110, Sch. B.

Ch. 174 of 1864 (June 30, 1864), § 170, Sch. B.  
§ 3418, U. S. R. S., repealed Mch. 3, 1883, 22 St. 488.

The "certificate of deposit not drawing interest" is new.

A revenue officer may inspect the paid checks in the custody of a bank to ascertain if the stamps have been affixed.

(1877) U. S. v. Mann, 95 U. S. 580.

(1875) U. S. v. Rhawn, 11 Phila. 521.

A report of bank officers in New York, 29 Sept., 1862, suggested that the certification of checks already duly stamped should not need an additional stamp for such certification. The Commissioner approved and followed this.

Edwards on the Stamp Act, p. 145.

Checks drawn by a bank upon itself, for dividends or otherwise, are exempt.

Edwards, Id., p. 145. See note as to cancellation of stamps by banks and telegraph companies, *ante*, p. 54.

An unstamped check or other instrument cannot be canceled by a person receiving it, but must be returned to the maker for this purpose.

Id.

Certificate of deposit not drawing interest defined:

(1892) Farmersville Nat. B'k v. Greenville Nat. B'k, 84 Texas, 40.

Entry in a pass-book is a certificate of deposit.

(1872) Oulton v. Savings Institution, 17 Wall. 109.

A memorandum-check is in reality merely a due-bill and not taxable; hence under Act of 1864, which exempted bank-checks, drafts, and orders for payment of money under \$10, it was not taxable.

(1873) U. S. v. Isham, 17 Wall. 496.

Post-dated check, payable at sight, put in circulation prior to its date, is a promissory note and to be stamped as such.

(1866) Pope v. Burns *et al.*, 4 I. R. R. 133; reversed on another point (1871) 59 Barb. 226.

Cashier's check on his own bank should be stamped.

(1869) 9 I. R. R. 165; 11 I. R. R. 193.

*Order for Payment of Money:*

This will include any check or order (sight or demand) drawn on broker or other person holding money.

**BILL OF EXCHANGE (INLAND), TIME DRAFT, PROMISSORY NOTE, OR MONEY ORDER.**

Bill of exchange (inland), draft, certificate of deposit, drawing interest, or order for the payment of any sum of money, otherwise than at sight or on demand, or any promissory note except bank notes issued for circulation, and for each renewal of the same, for a sum not exceeding one hundred dollars, two cents; and for each additional one hundred dollars or a fractional part thereof in excess of one hundred dollars, two cents. And from and after the first day of July, eighteen hundred and ninety-eight, the provisions of this paragraph shall apply as well to original domestic money orders issued by the Government of the United States, and the price of such money orders shall be increased by a sum equal to the value of the stamps herein provided for.

**Bill of Exchange (Inland).**

Certificate of deposit drawing interest or order for the payment of any sum of money (time).

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 174 of 1864 (June 30, 1864), § 170, Sched. B.

“Certificate of deposit drawing interest” is new. See (1892) *Farmersville B'k v. Greenville B'k*, 84 Tex. 40.

Certificate of deposit drawing interest and payable at a fixed time, held to be a promissory note.

(1842) *Bank of Orleans v. Merrill*, 2 Hill, 295.

*Order for Payment of Money:*

This will include any time order on a person holding money *e. g.* building loan mortgagee.

**Promissory Notes, except Bank Notes.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 174 of 1864 (June 30, 1864), § 170, Sched. B.

An instrument signed by several persons, each of whom promises to pay a certain amount opposite his name, is a promissory note, and total amount is taxable.

(1867) *Ballard v. Burnside*, 49 Barb. 102.

An unsigned admission of a balance due on an accounting is not a promissory note and does not require a stamp.

(1869) *Jones v. Jones*, 38 Cal. 584.

A merchandise due-bill held a contract requiring a stamp.

(1870) *U. S. v. Learned*, 1 Abb. U. S. 483.

A receipt for money loaned importing an obligation to repay must be stamped as a promissory note.

(1870) *Hoops v. Atkins*, 41 Ga. 109.

In several English cases a simple I. O. U. memorandum without an express promise to pay was held not to require a stamp.

(1796) *Fisher v. Leslie*, 1 Esp. Ca. 426.

And see cases cited in *Chitty on Contracts*, 13th ed., p. 155.

A due-bill in Illinois is a promissory note and must be stamped.

(1866) *Jacquín v. Warren*, 40 Ill. 459.

A post-dated draft, payable at sight, put in circulation prior to its date, is a promissory note and to be stamped as such.

(1866) *Pope v. Burns et al.*, 4 I. R. R. 133; reversed on another point (1871) 59 Barb. 226.

No stamp is necessary on the indorsement of a promissory note.

(1867) 5 I. R. R. 60.

### **Domestic Money Order.**

It was explained in the Senate that the provision regarding domestic money orders was inserted so that persons accustomed to buy bank or express orders should not escape the tax by using government orders.

### **BILL OF EXCHANGE (FOREIGN), LETTER OF CREDIT, TELEGRAPH AND EXPRESS MONEY ORDER.**

Bill of exchange (foreign) or letter of credit (including orders by telegraph or otherwise for the payment of money issued by express or other companies or any person or persons), drawn in but payable out of the United States, if drawn singly or otherwise than in a set of three or more, according to the custom of merchants and bank-

ers, shall pay for a sum not exceeding one hundred dollars, four cents, and for each one hundred dollars or fractional part thereof in excess of one hundred dollars, four cents.

If drawn in sets of two or more: For every bill of each set, where the sum made payable shall not exceed one hundred dollars, or the equivalent thereof, in any foreign currency in which such bill may be expressed, according to the standard of value fixed by the United States, two cents; and for each one hundred dollars or fractional part thereof in excess of one hundred dollars, two cents.

#### **Bill of Exchange (Foreign), or Letter of Credit.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

Both foreign and inland bills were stamp-taxed by the Act of July 6, 1797, amended Feb. 28, 1799; and by Act of Aug. 2, 1813.

This distinction between single bills and bills in sets is in the British law.

55 Geo. III., c. 184.

54 & 55 Vict., ch. 39, § 39.

*"According to Standard."*

See value of foreign money as fixed by Director of the Mint.

The English Act (1891, ch. 39), says "the duty shall be calculated on the value on the day of the date of the instrument, of the money in British currency according to the current rate of exchange." § 6. And of bills drawn in sets only one need be stamped. § 39.

In dealing with commercial paper the Federal courts tend to follow the general current of authority in mercantile law, and they often disregard State decisions. See (1880) *Railroad Co. v. National Bank*, 102 U. S. 14.

#### **Telegraphic or Express Money Orders.**

New.

The Commissioner has ruled that messages over private wires are not taxable. July 2, 1898.



**BILL OF LADING : EXPORT.**

Bills of lading or receipt (other than charter party) for any goods, merchandise, or effects, to be exported from a port or place in the United States to any foreign port or place, ten cents.

**Bill of Lading or Receipt.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

See exception at the end of Schedule A (p. 80), affecting British American ports.

**BILL OF LADING : DOMESTIC EXPRESS AND FREIGHT RECEIPTS.**

**EXPRESS AND FREIGHT:** It shall be the duty of every railroad or steamboat company, carrier, express company, or corporation or person whose occupation is to act as such, to issue to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and there shall be duly attached and canceled, as is in this Act provided, to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent: *Provided*, That but one bill of lading shall be required on bundles or packages of newspapers when inclosed in one general bundle at the time of shipment. Any failure to issue such bill of lading, manifest, or other memorandum, as herein provided, shall subject such railroad or steamboat company, carrier, express company, or corporation or person to a penalty of fifty dollars for each offense, and no such bill of lading,

manifest, or other memorandum shall be used in evidence unless it shall be duly stamped as aforesaid.

### **Express and Freight.**

Express companies were taxed by Act of 1862. They were expressly exempted by Act of 1865, ch. 78, p. 482.

(1868) *Belger v. Dinsmore*, 51 Barb. 69; s. c. 34 How. Pr. 421.

(1867) *DeBarre v. Livingston*, 48 Barb. 511.

The Act provides for stamps upon vellum, parchment or paper. (§ 6.)

This paragraph requires a stamp on "bill of lading, manifest or other evidence of receipt or forwarding. Must metal baggage checks, where extra rates are charged, be "stamped?"

The \$50 penalty is for a failure to issue a bill of lading, not for a failure to affix a stamp.

### **TELEPHONE MESSAGES: MONTHLY STATEMENT.**

**TELEPHONE MESSAGES:** It shall be the duty of every person, firm, or corporation owning or operating any telephone line or lines to make within the first fifteen days of each month a sworn statement to the collector of internal revenue in each of their respective districts, stating the number of messages or conversations transmitted over their respective lines during the preceding month for which a charge of fifteen cents or more was imposed, and for each of such messages or conversations the said person, firm, or corporation shall pay a tax of one cent: *Provided*, That only one payment of said tax shall be required, notwithstanding the lines of one or more persons, firms, or corporations shall be used for the transmission of each of said messages or conversations.

### **Telephone Messages:**

New.

**BOND.**

Bond: For indemnifying any person or persons, firm, or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, fifty cents.

**Indemnity Bonds and Bonds of Any Description.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

An insolvent's bond does not require a stamp.

(1866) *McGovern v. Hoesbeck*, 53 Pa. 176.

An administrator's bond is taxable.

(1867) *Blake v. Hall*, 19 La. Ann. 49.

Sheriff's bond to a state requires no stamp.

(1869) *State v. Garton*, 32 Ind. 1.

Bonds of executors, administrators and guardians are taxable (under clause similar to present Act).

(1867) 5 I. R. R. 60; (1869) 9 I. R. R. 161.

The bond of an assignee in bankruptcy needs a stamp.

(1867) 6 I. R. R. 68.

Bond by a treasurer of "Odd Fellows" needs a stamp.

(1867) 6 I. R. R. 202.

Bond for faithful disposition of proceeds of sale of real estate, etc., is exempt, being required in legal proceedings.

(1867) 6 I. R. R. 210.

A mortgage bond was expressly exempted from this clause in Act of 1864.

Now it is taxable, there being no exemption.

**CERTIFICATE OF PROFITS OR INTEREST: TRANSFER.**

Certificate of profits, or any certificate or memorandum showing an interest in the property or accumulations of any association, company, or corporation, and on all transfers thereof, on each one hundred dollars of face value or fraction thereof, two cents.

**Certificate of Profits or Interest in Business.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

**MARINE CERTIFICATES.**

Certificate: Any certificate of damage, or otherwise, and all other certificates or documents issued by any port warden, marine surveyor, or other person acting as such, twenty-five cents.

**Certificate of Damages and Marine Certificates.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

**OTHER CERTIFICATES.**

Certificate of any description required by law not otherwise specified in this Act, ten cents.

**Certificates of Any Description.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

The first Commissioner held that marriage, death, birth, baptismal and burial certificates all require stamps, but a marriage certificate which is filed in a public office under requirements of law, does not need a stamp.

(1869) 9 I. R. R. 166; (1867) 5 I. R. R. 60.

Certificate of officer to depositions taken before him is exempt.

(1866) *Prather v. Pritchard*, 26 Ind. 65.

(1864) *Cardell v. Bridge*, 9 Allen, 487.

So is certificate to copy of record.

(1866) *Toledo, etc., R. R. Co. v. Nordyke*, 27 Ind. 95.

(1864) *Com. v. Hardiman*, 9 Allen, 487.

And certificate of justice of the peace.

(1865) *East Haven v. Derby*, 38 Vt. 253, in effect overruling a Commissioner's decision. *Boutwell's Tax System*, 386.

But a return by a constable to a summons served by him needs a stamp.

(1870) *Miller v. Larmon*, 38 How. Pr. 417. But see notes to § 14, as to non-interference by U. S. in local processes.

*Parsons on Contracts* (5th ed.), vol. III., p. 325, suggests that every acknowledgment in writing not specially exempt may be liable to this tax, unless perhaps "certificate" be held applicable only to documents using the word "certify."

### CHARTER PARTY.

Charter party: Contract or agreement for the charter of any ship, or vessel, or steamer, or any letter, memorandum, or other writing between the captain, master, or owner, or person acting as agent of any ship, or vessel, or steamer, and any other person or persons, for or relating to the charter of such ship, or vessel, or steamer, or any renewal or transfer thereof, if the registered tonnage of such ship, or vessel, or steamer does not exceed three hundred tons, three dollars.

Exceeding three hundred tons and not exceeding six hundred tons, five dollars.

Exceeding six hundred tons, ten dollars.

#### Charter-Party.

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

This section differs a little from the provision of the British Act, 5 Geo. III., c. 35, § 11.

A former commissioner ruled that every copy of a charter-party to be used in evidence must have a stamp.

**BROKER'S NOTE.**

**Contract:** Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description issued by brokers or persons acting as such, for each note or memorandum of sale, not otherwise provided for in this Act, ten cents.

**Contract — Broker's Note.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

This paragraph is badly worded; if it be rearranged thus: "Broker's note, or memorandum of sale, issued by brokers or persons acting as such, of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate or property of any kind or description;" its meaning will be clear.

And it will be seen that it refers only to the note or memorandum issued by a broker, and does not require a stamp on every "memorandum of sale of any goods," etc.

Thus a contract for sale of real estate need not be stamped.

The former Acts of 1862 and 1864 taxed every agreement or contract, putting this provision at the head of Schedule B (corresponding to Schedule A in this Act): but that is omitted in this law and contracts generally are untaxed, and the word "contract" before Broker's note, is the survival of part of the older scheme not fully embodied in this Act.

A "contract note," under the English Act (1891, c. 39, § 52), is a note sent by a broker advising his principal of a sale or purchase of stock, and must have as many stamps as there are different kinds of securities reported in it. And (§ 53) a broker cannot recover his commission unless the note is stamped. The cost of the stamp may be added to the brokerage.

As to recovery of commissions by unlicensed brokers, see:

(1871) *Woodward v. Stearns*, 10 Abb.Pr. N. S. 395.

(1863) *Justice v. Rowand*, 10 Phila. 623.

## CONVEYANCE.

Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value exceeds one hundred dollars and does not exceed five hundred dollars, fifty cents; and for each additional five hundred dollars or fractional part thereof in excess of five hundred dollars, fifty cents.

**Conveyance.**

Ch. 119 of 1862 (July 1, 1862). § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

*Ad valorem* duties on conveyances were first imposed in England by 48 Geo. III., ch. 149 (1808).

They were levied in the U. S. by ch. 119, of 1862 (July 1), § 110, Sched. B, and continued by the Act of June, 1864, § 170, Sched. B. These taxes were repealed by § 36, ch. 315 of 1872 (June 6), and are now revived.

A mere declaration of a trust in land is not a conveyance, and does not require a stamp.

(1868) *Sime v. Howard*, 4 Nev. 473.

Such an instrument was expressly taxed in the English Stamp Act of 1870.

Deeds effecting an equal partition among tenants in common are not taxable, since there is no sale, but only a defining of boundaries; but if the shares are unequal and money passes, the deed must be stamped.

Opin. of Dep. Com., 3 I. R. R. 118 (April 14, 1866).

The British statute required the actual consideration to be expressed on penalty of heavy forfeitures, of a recovery of the difference by the purchaser, and also severe penalties on attorneys and others for not inserting the true consideration. See Act of 1808, *supra*, and Stamp Act of 1891, 54 & 55 Vict., ch. 39, § 5.

This paragraph uses the phrase "consideration or value," but does not expressly prohibit the use of fictitious or nominal considerations,

and does not provide how the true value is to be determined when it differs from the consideration named.

And the court appeared in doubt as to how it was to be done.

(1865) *Groesbeck v. Seeley*, 13 Mich. 329, 345.

A conveyance in consideration of love and affection was held under a department ruling to require no stamp.

(1870) *Mercer v. Mercer*, 29 Iowa, 557.

And see Commissioner's Opinion to Wells, Collector, I. R. R., May 12, 1866, p. 151.

Edwards on the Stamp Act (p. 91), discusses an instance where the U. S. Commissioner seemed to decide that the stamp duty was to be paid upon the consideration named in the deed, viz.: the difference between the actual value and the amount of an existing mortgage.

The British Act expressly says that in such a case the mortgage shall be deemed a part of the purchase money or consideration. Tilsley, pp. 237, 241, and English Stamp Act of 1891, § 57.

Circular No. 17, July 13, 1864, Collection 1871, p. 40, said that where a collector had reason to suppose the expressed consideration in an instrument was less than the actual consideration, he should require evidence on the point (under § 162 of Act of June 30, 1864).

Where a (stamped) deed is inoperative and another is given in confirmation, with recitals showing this fact, the second instrument need not be stamped.

(1841) *Doe, etc., v. Weston*, 2 A. & E. (N. S.) 249; 11 L. J. Rep. (N. S.) Com. L. 17; 1 Gale & D. 582.

A properly stamped conveyance is not vitiated by the fact that a previous deed in the same title was not duly stamped.

(1877) *Kinney v. Consol. Virg. M. Co.*, 4 Sawyer, 382.

A bought of B, whose deed was insufficiently stamped, of which A had no notice. On an attempt by B's creditors to set aside the deed to B as fraudulent and void under Revenue Act, held that A's title was not affected, but he might be compelled to pay balance of purchase price to B's creditors.

(1881) *Dowell v. Applegate*, 7 Fed. Rep. 881

A revenue stamp is not required on a tax deed.

(1869) *Delorme v. Ferk*, 24 Wis. 201.

(1867) *Sayles v. Davis*, 22 Wis. 225.



It is not in the constitutional power of Congress to prescribe for the States a rule for the transfer of property within them, and a deed is valid to prove title in a partition suit, although not stamped.

(1872) *Moore v. Moore*, 47 N. Y. 467.

A deed is to be stamped according to the actual consideration.

(1873) *Hall v. Jordan*, 19 Wall. 271.

(1881) *U. S. v. Griswold*, 7 Saw. 311.

A seller of unimproved land, in order to obtain an expected profit of nearly twice its value, conveyed it in fee, with a stipulation that he would, by certain instalments, advance more than four times its value towards the cost of stipulated improvement; and received, when he conveyed it, mortgages of it securing a sum composed of his advances, and the amount of his intended profit. This was done under an arrangement that the purchaser should not become a debtor for any of these amounts. The seller, therefore, made the conveyance to an irresponsible middleman, who executed the mortgages and the bonds which they secured, and the stipulation to improve the land; and thereupon conveyed it, while still unimproved, for a nominal consideration, to the party who had, from the first, been the intended purchaser, describing it as subject to the mortgages. The stipulated improvements having been completed, the value of the land, as enhanced by them, exceeded greatly the whole amount secured by the mortgages.

A double stamp duty was not incurred by the duplication of the original conveyance.

The conveyance from the middleman required no stamp, the consideration or value not exceeding one hundred dollars.

The conveyance to him should have been stamped under an assessment of the duty, not upon any prospective enhancement of the value of the land by the stipulated improvements, nor upon the value of it as unimproved at the date of the conveyance, nor upon the expected profit, but upon the *consideration* estimated as the whole amount of the return secured by the mortgages to the seller, not deducting his advances.

(1864) *James v. Blauvelt*, 26 Law Reporter, 485 (U. S. C. C. Pa.)

Stamp tax increased from \$380 to \$960.

A conveyance was held not admissible to prove title unless properly stamped.

(1867) *Barney v. Ivins*, 22 Iowa, 163,

nor as evidence (1871) *Byington v. Oaks*, 32 Iowa, 488.

A deed insufficiently stamped may not be recorded under Act of 1864, and if recorded, the record is "utterly void," but the deed itself will remain good, and one who seeks to set it aside as fraudulent must allege and prove that insufficient stamps were used with intent to defraud the revenue.

Failure to cancel the stamps will not make the deed or the record void.

(1881) *Dowell v. Applegate*, 7 Fed. 881.

It may be well to adopt the old English form of attestation of deeds, thus "Signed, sealed, acknowledged and delivered, *being first duly stamped*, in the presence of —."

### TELEGRAM.

Dispatch, telegraphic: Any dispatch or message, one cent.

#### Telegraphic Dispatch.

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B (not in Act of 1864).

### CUSTOM-HOUSE ENTRY.

Entry of any goods, wares, or merchandise at any custom-house, either for consumption or warehousing, not exceeding one hundred dollars in value, twenty-five cents.

Exceeding one hundred dollars and not exceeding five hundred dollars in value, fifty cents.

Exceeding five hundred dollars in value, one dollar.

Entry for the withdrawal of any goods or merchandise from customs bonded warehouse, fifty cents.

#### Custom House Entry.

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

### INSURANCE POLICY.

Insurance (life): Policy of insurance, or other instrument, by whatever name the same shall be called,

whereby any insurance shall hereafter be made upon any life or lives, for each one hundred dollars or fractional part thereof, eight cents on the amount insured: *Provided*, That on all policies, for life insurance only, issued on the industrial or weekly-payment plan of insurance, the tax shall be forty per centum of the amount of the first weekly premium. And it shall be the duty of each person, firm, or corporation issuing such policies to make within the first fifteen days of every month a sworn statement to the collector of internal revenue in each of their respective districts, of the total amount of first weekly premiums received on such policies issued by the said person, firm, or corporation during the preceding month, and upon the total amount so received, the said person, firm, or corporation shall pay the said tax of forty per centum: *Provided further*, That the provisions of this section shall not apply to any fraternal, beneficiary society, or order, or farmers' purely local cooperative company or association, or employees' relief associations operated on the lodge system, or local cooperation plan, organized and conducted solely by the members thereof for the exclusive benefit of its members and not for profit.

Insurance (marine, inland, fire): Each policy of insurance or other instrument, by whatever name the same shall be called, by which insurance shall be made or renewed upon property of any description (including rents or profits), whether against peril by sea or on inland waters, or by fire or lightning, or other peril, made by any person, association, or corporation, upon the amount of premium charged, one-half of one cent on each dollar or fractional part thereof: *Provided*, That purely cooperative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own

property and not for profit shall be exempted from the tax herein provided.

Insurance (casualty, fidelity, and guarantee): Each policy of insurance, or bond or obligation of the nature of indemnity for loss, damage, or liability issued, or executed, or renewed by any person, association, company, or corporation, transacting the business of accident, fidelity, employer's liability, plate glass, steam boiler, burglary, elevator, automatic sprinkler, or other branch of insurance (except life, marine, inland, and fire insurance), and each bond undertaking or recognizance, conditioned for the performance of the duties of any office or position, or for the doing or not doing of anything therein specified, or other obligation of the nature of indemnity, and each contract or obligation guaranteeing the validity or legality of bonds or other obligations issued by any State, county, municipal, or other public body or organization, or guaranteeing titles to real estate or mercantile credits executed or guaranteed by any fidelity, guarantee, or surety company upon the amount of premium charged, one-half of one cent on each dollar or fractional part thereof.

### **Insurance Policy.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

The following words in these three paragraphs are new:

In the life paragraph:

The entire two provisos.

In the marine paragraph:

(including rents and profits)

or on inland waters

or lightning.

The entire proviso.

In the casualty paragraph:

The entire paragraph.

A bond given by a surety company on which the premium is \$10 will thus require a five-cent stamp, but a similar bond given by individuals will require a fifty-cent stamp. See Bond, *ante*, p. 65.

Observe that every *renewal* of insurance will require a new stamp.

An assignment of an insurance policy as security for a debt with a redemption privilege is a mortgage and requires a stamp.

(1850) Caldwell *v.* Dawson, 5 Exchequer, 1.

But see (1842) Harris *v.* Birch, 9, M. & W. 591, where a pledge under peculiar circumstances was held not to be a taxable mortgage.

For a discussion of the old acts as affecting marine policies, see Edwards on the Stamp Act, pp. 156 *et seq.*

Insurance agents were taxed (license) by the Act of March 3, 1865, as amended, 1866, 1867, etc.: repealed.

The present act, as passed by the Senate, provided for a similar special tax (\$12), but it was omitted from the law as finally passed.

The difficulty of paying the tax on open marine policies has been met by the following circular issued by the Commissioner to the local collectors:

Under the "war-revenue law" (paragraph entitled "insurance," in land, marine, fire, page 15), the tax on marine insurance is to be paid by a stamp representing one-half of one cent on each dollar or fractional part thereof upon the amount of premium charged. It appearing to the satisfaction of this office that from the nature of the marine insurance business it is only possible to ascertain the amount of the premiums charged under open policies from the books of the underwriters, and as they have filed a satisfactory bond, you are authorized to accept the affixing of stamps to said books and their due cancelation as full compliance with the law, provided that the stamps are affixed monthly and the figures are sworn to by the President and Secretary or the recognized attorneys or agents of the marine insurance corporation or association paying the tax.

You will also on the first day of each month or within ten days thereafter require a return in duplicate on a form to be prescribed by this office from each of such underwriters showing the amount of premiums received under open policies during the preceding month the first return to be made on the first day of August, 1898, or within ten days thereafter, to include all premiums charged during the month of July, 1898.

### LEASE.

Lease, agreement, memorandum, or contract for the hire, use, or rent of any land, tenement, or portion thereof —

If for a period of time not exceeding one year, twenty-five cents.

If for a period of time exceeding one year and not exceeding three years, fifty cents.

If for a period exceeding three years, one dollar.

**Lease, etc.**

Ch. 119 of 1862 (July, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

In a justice's court in New York City it was held that the act of Congress required all leases to be in writing and stamped, and that evidence of an unwritten lease could not be received.

(1865) *Fleming v. Cherry*, 31 How. Pr. 96.

A lease from the government requires no stamp. See (1841) *Petrie v. Lamont*, 1 C. & M. 93.

Query: Do sub-leases require stamps?

"Portion thereof."

Taking rooms and board at a hotel or boarding-house does not constitute the parties landlord and tenant.

(1845) *Wilson v. Martin*, 1 Denio, 602.

Should duplicate leases both be stamped?

See the English Act of 1891, §§ 72, 78, which so requires.

**CUSTOM-HOUSE MANIFEST.**

Manifest for custom-house entry or clearance of the cargo of any ship, vessel, or steamer for a foreign port —

If the registered tonnage of such ship, vessel, or steamer does not exceed three hundred tons, one dollar.

Exceeding three hundred tons, and not exceeding six hundred tons, three dollars.

Exceeding six hundred tons, five dollars.

**Manifest.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

**MORTGAGE OR PLEDGE ASSIGNMENTS AND RENEWALS.**

Mortgage or pledge, of lands, estate, or property, real or personal, heritable, or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money, lent at the time or previously due and owing or forborne to be paid, being payable; also any conveyance of any lands, estate, or property whatsoever, in trust to be sold or otherwise converted into money, which shall be intended only as security, either by express stipulation or otherwise; on any of the foregoing exceeding one thousand dollars and not exceeding one thousand five hundred dollars, twenty-five cents; and on each five hundred dollars or fractional part thereof in excess of fifteen hundred dollars, twenty-five cents: *Provided*, That upon each and every assignment or transfer of a mortgage, lease, or policy of insurance, or the renewal or continuance of any agreement, contract, or charter, by letter or otherwise, a stamp duty shall be required and paid at the same rate as that imposed on the original instrument.

**Mortgage.**

Ch. 119 of 1862 (July 1), § 110, Sched. B.

Ch. 173 of 1864 (June 30), § 170, Sched. B.

A chattel mortgage made to secure a draft for the mortgagor's benefit and payable thereafter to the mortgagee (being on R. R. rolling stock), needs no stamp.

(1867) *Vail v. Knapp*, 49 Barb. 299.

Post-stamping of a mortgage after it was recorded without a stamp will not cure the defect so as to make it notice to third parties.

(1867) *McBride v. Doty*, 23 Iowa, 122.

A second mortgage given as additional security requires a stamp.

(1869) *Berry v. Boyd*, 28 Iowa, 410.

If a mortgage is stamped, the accompanying note need not be.

(1874) *Pargoud v. Richardson*, 26 La. Ann. 672.

(1877) *Garrish v. Hyman*, 29 La. Ann. 28.

Under the original Act of 1862, both the bonds and the mortgages were decided to require stamps.

Com'r Boutwell, N. Y. Transcript, 26 Dec. '62; Edwards on Stamp Act, p. 100.

The Act of 3 March, 1863, § 6, provided that one stamp should be sufficient. This was also true of Act of 1864, § 160.

But there is no such provision in the present act, and hence the bond must be stamped as well as the mortgage.

A mortgage, if insufficiently stamped, is void.

(1865) *Hoppock v. Plato*, 31 How. Pr. 120.

**Assignment of Mortgage** is stamp-taxable at same rate as mortgage.

An apparently absolute conveyance of goods was accompanied by a contract of defeasance. The former was stamped, the latter not. *Quære*: Whether the revenue laws could be applied so as to prevent the natural legal construction of the whole contract.

(1867) *Carpenter v. Snelling*, 97 Mass. 452.

An assignment of an insurance policy as security for a debt with a redemption privilege is a mortgage and requires a stamp.

(1850) *Caldwell v. Dawson*, 5 Excheq. 1.

But see (1842) *Harris v. Birch*, 9 M. & W. 591.

### PASSAGE TICKET.

Passage ticket, by any vessel from a port in the United States to a foreign port, if costing not exceeding thirty dollars, one dollar.

Costing more than thirty and not exceeding sixty dollars, three dollars.

Costing more than sixty dollars, five dollars.

#### Passage Ticket.

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

But see proviso under Warehouse Receipt, page 80, *post*, as to ports of British North America.

*Quære* as to international ferries on the Mexican frontier.



**PROXY.**

Power of attorney or proxy for voting at any election for officers of any incorporated company or association, except religious, charitable, or literary societies, or public cemeteries, ten cents.

**POWER OF ATTORNEY.**

Power of attorney to sell and convey real estate, or to rent or lease the same, to receive or collect rent, to sell or transfer any stock, bonds, scrip, or for the collection of any dividends or interest thereon, or to perform any and all other acts not hereinbefore specified, twenty-five cents: *Provided*, That no stamps shall be required upon any papers necessary to be used for the collection of claims from the United States for pensions, back pay, bounty, or for property lost in the military or naval service.

**Power of Attorney.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

**PROTEST.**

Protest: Upon the protest of every note, bill of exchange, acceptance, check or draft, or any marine protest, whether protested by a notary public or by any other officer who may be authorized by the law of any State or States to make such protest, twenty-five cents.

**Protest.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

Under the old acts it was understood that the stamp duty might be added to the protest charge.

Report N. Y. Bankers, 29 Sep., 1862, cited by Edwards, p. 185.

**WAREHOUSE RECEIPT.**

Warehouse receipt for any goods, merchandise, or property of any kind held on storage in any public or private warehouse or yard, except receipts for agricultural products deposited by the actual grower thereof in the regular course of trade for sale, twenty-five cents: *Provided*, That the stamp duties imposed by the foregoing schedule on manifests, bills of lading, and passage tickets shall not apply to steamboats or other vessels plying between ports of the United States and ports in British North America.

**Warehouse Receipt.**

Ch. 119 of 1862 (July 1, 1862), § 110, Sched. B.

Ch. 173 of 1864 (June 30, 1864), § 170, Sched. B.

All receipts for grain or other property of any kind, held on storage in any public or private warehouse or yard, are "warehouse receipts" within the meaning of the excise law, and are each subject to a stamp duty according to the value of the property stored. Boutwell, p. 186.

**SCHEDULE B.****MEDICINAL PROPRIETARY ARTICLES AND PREPARATIONS.**

Medicinal proprietary articles and preparations: For and upon every packet, box, bottle, pot, or phial, or other inclosure, containing any pills, powders, tinctures, troches or lozenges, sirups, cordials, bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters (except natural spring waters and carbonated natural spring waters), essences, spirits, oils, and all medicinal preparations or compositions whatsoever, made and sold, or removed for sale, by any person or persons whatever, wherein the person making or preparing the

same has or claims to have any private formula, secret, or occult art for the making or preparing the same, or has or claims to have any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended, or exposed for sale under any letters patent, or trade-mark, or which, if prepared by any formula, published or unpublished, are held out or recommended to the public by the makers, venders, or proprietors thereof as proprietary medicines, or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body, as follows: Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall not exceed, at the retail price or value, the sum of five cents, one-eighth of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of five cents and shall not exceed, at the retail price or value, the sum of ten cents, two-eighths of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of ten cents and shall not exceed at the retail price or value the sum of fifteen cents, three-eighths of one cent.

Where each packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of fifteen cents and shall not exceed the retail price or value of twenty-five cents, five-eighths of one cent. And for each additional twenty-five cents of retail price or value or fractional part thereof in excess of twenty-five cents, five-eighths of one cent.

**Medicinal Proprietary Articles and Preparations.**

Act of 1862 (July 1), § 110, Sched. C.

Act of 1864 (June 30), § 170, Sched. C.

U. S. R. S. 1878, §§ 3419, 3437.

The following words are new:

Line 6 (*except natural spring waters and carbonated natural spring waters.*)

Line 16 *or trademark, or which, if prepared by any formula, published or unpublished,*

Line 19 *or medicinal proprietary articles or preparations,*  
and are intended to widen the scope of the schedule. Nearly all of these provisions called forth lengthy discussion when the act was in the Senate.

**Package:**

Friction matches were put up in a box so contrived that it consisted of two drawers, only one of which could be opened or uncovered at one time. Held to be one package, not two, and to require one stamp only.

(1877) U. S. v. Goldback, 1 Hughes, 529.

**Samples:**

The Department has ruled that free samples must pay the stamp tax as well as articles sold.

As to the right of the druggist to increase the cost to the consumer, when the stamp tax is less than one cent, see

(1866) Black v. Sixth Ave. R. R. Co., 1 Daly, 536.

Pinaud's Eau de Quinine Tonique is a toilet preparation.

(1896) *In re* Merchandise Imported by Hoit, 75 Fed. Rep. 998.

Elaterium is not a medical preparation.

(1895) U. S. v. Merck, 66 Fed. Rep. 251.

As to antipyrine, see

(1895) Schulze-Berge v. U. S., 66 Fed. R. 748.

As to hydrochlorate or muriate of cocaine, see

(1895) Lehn v. U. S., 66 Fed. Rep. 748.

If the stamp is not on the article when sold the presumption is that it never was stamped.

(1869) U. S. v. Brown, Deady, 566.

An "original package" may be opened to enable a purchaser to view its contents and then immediately closed again, without ceasing to be an "original package."

(1869) U. S. *v.* Fox, Deady, 579.

Phial:

As to the meaning of phial or vial, see

(1896) *Re* Grace, 75 Fed. Rep. 2.

(1897) *Grace v. Collector*, 48 U. S. App. 225, 79 Fed. Rep. 315.

As to the distinction between proprietary medicinal preparations, such as bitters, and distilled spirits, see

(1895) U. S. *v.* Wilson, 69 Fed. Rep. 144.

For instances of proprietary preparations passed upon under tariff laws, see

(1885) *Ferguson v. Arthur*, 117 U. S. 482.

In this case the court refers to the Internal Revenue acts and discusses the word "proprietary."

(1894) U. S. *v.* Eisner & M. Co., 59 Fed. R. 352.

The tariff laws and adjudications thereon will afford other points of interest and value, at least by way of suggestion.

## PERFUMERY AND COSMETICS.

Perfumery and cosmetics and other similar articles: For and upon every packet, box, bottle, pot, phial, or other inclosure containing any essence, extract, toilet water, cosmetic, vaseline, petrolatum, hair oil, pomade, hair dressing, hair restorative, hair dye, tooth wash, dentifrice, tooth paste, aromatic cachous, or any similar substance or article, by whatsoever name the same heretofore have been, now are, or may hereafter be called, known, or distinguished, used or applied, or to be used or applied as perfumes or as applications to the hair, mouth, or skin, or otherwise used, made, prepared, and sold or removed for consumption and sale in the United States, where such packet, box, bottle, pot, phial, or other inclos-

ure, with its contents, shall not exceed at the retail price or value the sum of five cents, one-eighth of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of five cents, and shall not exceed the retail price or value of ten cents, two-eighths of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of ten cents, and shall not exceed the retail price or value of fifteen cents, three-eighths of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of fifteen cents and shall not exceed the retail price or value of twenty-five cents, five eighths of one cent. And for each additional twenty-five cents of retail price or value or fractional part thereof in excess of twenty-five cents, five-eighths of one cent.

#### **Perfumery, Cosmetics, and other Similar Articles.**

Act of 1862 (July 1), § 110, Sched. C.

Act of 1864 (June 30), § 170, Sched. C.

The following words are new:

Line 1 *and other similar articles.*

Line 4 *vaseline, petrolatum.*

Line 7 *substance.*

Line 11 *or otherwise used.*

Bay rum is a toilet water. 7 I. R. R. 11.

Fancy toilet soaps are not taxable. 3 I. R. R. 85.

But a dentifrice soap is. 10 I. R. R. 5.

And doubtless, also, all medicated soaps.

Such phrases as "other similar articles" have often been adjudicated under tariff laws and in connection with R. S., § 2499. The name is not the sole or chief guide in classification. The nature, material and use may determine it.

See (1885) *Schmieder v. Barney*, 113 U. S. 645.

(1879) *Greenleaf v. Goodrich*, 101 U. S. 278.

(1887) *Koch v. Seeberger*, 30 Fed. Rep. 424.

(1882) *Arthur v. Fox*, 108 U. S. 125.

(1853) *Wilkinson v. Greely*, 1 Curtis, 439.

### CHEWING GUM.

Chewing gum or substitutes therefor: For and upon each box, carton, jar, or other package containing chewing gum of not more than one dollar of actual retail value, four cents; if exceeding one dollar of retail value, for each additional dollar or fractional part thereof, four cents; under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

#### Chewing Gum or substitutes therefor:

New.

Manufacturers must pack their boxes in a way to comply with the law. When a tax was placed on friction matches, which was increased when the box contained 300 matches or more, manufacturers, if they choose to take chances by "lumping" them in the box without an exact count, must not take them against the Government.

(1878) *Schmitt v. Trowbridge*, 3 Cin. Law Bnl. 1029.

### BOTTLED WINE.

Sparkling or other wines, when bottled for sale, upon each bottle containing one pint or less, one cent.

Upon each bottle containing more than one pint, two cents.

#### Sparkling or other Wines.

Act of 1872 (June 6), § 12.

Imitation sparkling wines.

(1873) U. S. v. One Case, 6 Ben. 493.

### ARTICLES ON HAND TO BE STAMPED AT TIME OF RETAIL SALE.

That all articles and preparations provided for in this schedule which are in the hands of manufacturers or of

wholesale or retail dealers on the first day of July, eighteen hundred and ninety-eight, shall be subject to the payment of the stamp taxes herein provided for, but it shall be deemed a compliance with this Act as to such articles on hand in the hands of wholesale or retail dealers as aforesaid who are not the manufacturers thereof to affix the proper adhesive tax stamp at the time the packet, box, bottle, pot, or phial, or other inclosure with its contents is sold at retail.

### DRAWBACKS ON EXPORTS.

**Sec. 26.** There shall be an allowance of drawback on articles mentioned in Schedule B of this Act on which any internal-revenue tax shall have been paid, equal in amount to the stamp tax paid thereon, and no more, when exported, to be paid by the warrant of the Secretary of the Treasury on the Treasurer of the United States, out of any money arising from internal taxes not otherwise appropriated: *Provided*, That no allowance of drawback shall be made for any such articles exported prior to July first, eighteen hundred and ninety-eight. The evidence that any such tax has been paid as aforesaid shall be furnished to the satisfaction of the Commissioner of Internal Revenue by the person claiming the allowance of drawback, and the amount shall be ascertained under such regulations as shall be prescribed from time to time by said Commissioner, with the approval of the Secretary of the Treasury.

Act of 1864 (June, 30), § 171.

A manufacturer of cosmetics, on receiving an order from a customer in Havana, put up the goods in boxes marked with customer's name and sent them to the steamship wharf, where they were seized. There were no stamps affixed. Held that, not being stamped, even



though intended for exportation, they were forfeited under § 167 of Act of 1864.

(1873) U. S. *v.* 237 Boxes, 6 Ben. 543.

For regulations concerning the exportation of medicines, preparations, etc., under the Acts of 1862, 1863, see Collection of Circulars, 1871, p. 264. See 6 I. R. R. 106 for similar regulations dated Sept. 10, 1867.

When claim for drawback is refused, suit may be brought in the Court of Claims.

(1882) *Campbell v. U. S.*, 107 U. S. 407.

As to fraudulent claim for drawback, see R. S., § 3443.

### **EXCISE TAXES ON PERSONS, FIRMS, COMPANIES, AND CORPORATIONS ENGAGED IN REFINING PETROLEUM AND SUGAR.**

**Sec. 27.** That every person, firm, corporation, or company carrying on or doing the business of refining petroleum, or refining sugar, or owning or controlling any pipe line for transporting oil or other products, whose gross annual receipts exceed two hundred and fifty thousand dollars, shall be subject to pay annually a special excise tax equivalent to one-quarter of one per centum on the gross amount of all receipts of such persons, firms, corporations, and companies in their respective business in excess of said sum of two hundred and fifty thousand dollars.

And a true and accurate return of the amount of gross receipts as aforesaid shall be made and rendered monthly by each of such associations, corporations, companies, or persons to the collector of the district in which any such association, corporation, or company may be located, or in which such person has his place of business. Such return shall be verified under oath by the person making the same, or, in case of corporations, by the president or chief officer thereof. Any person or officer failing or

refusing to make return as aforesaid, or who shall make a false or fraudulent return, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars for each failure or refusal to make return as aforesaid and for each and every false or fraudulent return.

The tax upon gross receipts has precedents. See, as to railroads, steamboats and ferryboats, Act of 1862 (July 1), § 80; as to express companies, Act of 1863, ch. 74, § 10 (13 Stat., p. 722); and Act of 1864 (June 30), § 105; as to advertisements, Act of 1864 (June 30), § 114.

As to former attempt to tax sugar for war revenue, see Act of 1862 (July 16), ch. 187, "to impose an additional duty on sugars produced in U. S." This was repealed by § 173 of Act of 1864 (June 30).

In a circular issued July 1, 1864 (Collection 1871, p. 296), the assessors were notified that the gross receipts of an insurance company are the amount of cash received, whether by the company at its principal office or by its agents.

### **PALACE AND SLEEPING CAR TICKETS.**

**Sec. 28.** That from and after the first day of July, eighteen hundred and ninety-eight a stamp tax of one cent shall be levied and collected on every seat sold in a palace or parlor car and on every berth sold in a sleeping car, the stamp to be affixed to the ticket and paid by the company issuing the same.

New. Enacted after unsuccessful attempts in Senate to tax the car companies on their gross receipts. Cong. Rec., 6158 *et seq.*

### **LEGACIES AND DISTRIBUTIVE SHARES OF PERSONAL PROPERTY.**

**Sec. 29.** That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars

in actual value, passing, after the passage of this Act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows — that is to say: Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be:

First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother, or sister to the person who died possessed of such property, as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property.

Second. Where the person or persons entitled to any beneficial interest in such property shall be the descendant of a brother or sister of the person who died possessed, as aforesaid, at the rate of one dollar and fifty cents for each and every hundred dollars of the clear value of such interest.

Third. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother, of the person who died possessed as aforesaid, at the rate of three dollars for each and every hundred dollars of the clear value of such interest.

Fourth. Where the person or persons entitled to any

beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother, of the person who died possessed as aforesaid, at the rate of four dollars for each and every hundred dollars of the clear value of such interest.

Fifth. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at the rate of five dollars for each and every hundred dollars of the clear value of such interest: *Provided*, That all legacies or property passing by will, or by the laws of any State or Territory, to husband or wife of the person died possessed, as aforesaid, shall be exempt from tax or duty.

When the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum or value of one hundred thousand dollars, the rates of duty or tax above set forth shall be multiplied by one and one-half; and where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two; and where the amount or value of said property shall exceed the sum of five hundred thousand dollars, but shall not exceed the sum of one million dollars, such rates of duty shall be multiplied by two and one-half; and where the amount or value of said property shall exceed the sum of one million dollars, such rates of duty shall be multiplied by three.

With the exception of the last paragraph, this section is taken, with a change of rates, from § 124, ch. 173, Stat. 1864, which is slightly modified from § 111, ch. 119, Stat. 1862. See R. S. §§ 3438-3440.

The last paragraph is an indication of the increase of the number and extent of private fortunes since the civil war.

Such a tax is in use in nearly all European countries and can be traced to the civil law of Rome. Gibbon (*Decline & Fall*, vol. 1, p. 422, and note by Dr. Wm. Smith), refers to it as having been employed by Augustus to support the army. Small estates and legacies to near relatives were exempt from the *vicesima hereditatum et legatorum*.

As early as 1797 (Act of July 6, 1 Stat., c. 11), the U. S. imposed a stamp tax on legacies and distributive shares. Like the first English legacy tax, this was merely the requirement of a stamp on the receipt.

The Acts of 1862 and 1864 included a probate tax in their schedules.

The Act of 1864 also imposed a succession tax on real estate (§§ 126-150).

As elsewhere observed (*post*, p. 93), Great Britain has elaborated a system of "death duties," in reference to which it is not always kept in mind that in England the nation and the State are one, whereas in America the Federal Government, by the re-enactment of this legislation, is encroaching upon a field of taxation largely occupied by the commonwealths. Among the States that have adopted some form of inheritance tax are:

Penna. (1826), La. (1828), Va. (1844), No. Car. (1846), Md. (1864), Del. (1869), N. Y. (1885), W. Va. (1887), Conn. (1889), Maine (1893), Mass. (1891), Ohio (1893), Ill. (1895), Cal. (1893), N. J. (1894), Tenn. (1891), Minn. (Amend. to Constitution, 1894).

The legacy and succession taxes were repealed July 14, 1870, by ch. 255, §§ 3 and 27 (16 Stat. 256).

Succession to an inheritance may be taxed as a privilege, although the estate itself is also taxed, and although the Constitution requires taxes to be uniform.

(1858) *Eyre v. Jacob*, 14 Gratt. (Va.) 422, affirmed repeatedly and in (1884) *Schoolfield's Ex'or v. City of Lynchburg*, 78 Virginia 366.

(1868) *Tyson v. State*, 28 Md. 577.

(1889) *State v. Dalrymple*, 70 Md. 294.

(1893) *Matter of Estate of Swift*, 137 N. Y. 77.

(1894) *Matter of Merriam*, 141 N. Y. 484.

(1866) *Strode v. Commonwealth*, 52 Pa. St. 181.

(1872) *Pullen v. Com'rs of Wake Co.*, 66 N. C. 361.

The legacy tax only applies to the estate of one who dies possessed of the property; thus, when A, before the passage of the act, executed a trust deed of property in which he reserved an income for himself

and wife and on their deaths directed the immediate distribution among his children, held not taxable.

(1881) *U. S. v. Leverich*, 9 Fed. Rep. 586.

An instrument vesting property in trustees, for the benefit of the grantor for his life and thereafter for others, with a power of revocation, is not liable to a legacy duty.

(1835) *Thompson v. Browne*, 3 Mylne & K. 32.

An instrument may pass property from the dead to the living, and yet not be testamentary or subject to legacy duty.

(1852) *Brown v. Adv.-Gen.*, on error from Excheq. in Scotland, 1 Macqueen's App. 79.

As to evading a legacy tax by disclaiming the bequest, see

(1858) *Atty.-Gen. v. Munby*, 3 H. & N. 826.

The legacy tax is only chargeable on estates of those who die domiciled in U. S.

(1882) *U. S. v. Hunnewell*, 13 Fed. Rep. 617.

Where a testator removed his residence to Europe and died there, the legacies were held not subject to the tax imposed by the Act of 1864.

(1886) *U. S. v. Morris*, 27 Fed. Rep. 341

As to whether the interest of a resident citizen under the will of a non-resident alien is subject to the tax.

(1881) *U. S. v. Rankin*, 8 Fed. R. 872.

In England there is no legacy duty on personal property bequeathed by a testator domiciled abroad.

(1845) *Thomson v. Advocate-Gen.*, 12 Cl. & F. (Ho. of L.) 1.

The converse is true, that where a testator died domiciled in England, legacy duty was payable on his personalty, though not situate in that country.

(1851) *Atty.-Gen. v. Napier*, 6 Exch. 217.

Property in England belonging to a foreigner who dies abroad and makes a bequest to English legatees through an English executor is not liable to a tax duty.

(1832) *In re Bruce*, 2 C. & J. 436.

A legacy tax (Act 1864, c. 173) is a charge upon the income of a

will made before the enactment, leaving a trust fund to provide a net income.

(1869) *Sohier v. Eldredge*, 103 Mass. 345.

A legacy under a will probated prior to the act, which vests in enjoyment after the act, is subject to the tax.

(1869) *Blake v. McCartney*, 4 Cliff. 101.

(1871) *Brune v. Smith*, 13 l. R. R. 54.

A legacy, when not vested until after the repeal of the legacy tax, although given in a will probated before such repeal, was not subject to the tax.

(1881) *Mason v. Sargent*, 104 U. S. 689.

(1886) *Sturges v. U. S.*, 117 U. S. 363.

(1886) *U. S. v. Kelly*, 28 Fed. Rep. 845.

(1881) *U. S. v. Hazard*, 8 Fed. Rep. 380.

(1881) *U. S. v. Brice*, 8 Fed. Rep. 381.

(1878) *U. S. v. N. Y. L. I. & T. Co.*, 9 Ben. 413.

(1876) *Clapp v. Mason*, 94 U. S. 589.

As to cases affecting "succession" to real estate under former acts.

(1880) *U. S. v. Hart*, 4 Fed. Rep. 292.

(1883) *U. S. v. Banks*, 17 Fed. Rep. 322.

(1877) *Wilhelmi v. Wade*, 65 Mo. 39.

(1879) *Ransom v. U. S.*, 8 Reporter, 164.

American courts have often cited English decisions, and not always with discrimination. It must be borne in mind that England has a "Probate duty," established as long ago as 1694, and now superseded by the "Estate duty," under the Finance Act, 1894; a "Legacy duty," which began in 1780 as a stamp tax on receipts for legacies and shares, but became a system under 36 Geo. III., c. 52; and a "Succession duty" upon all gratuitous acquisitions, 16 & 17 Vict., c. 51 (1853) and amendments. All these various "Death duties" have been frequently adjudicated, but, before accepting any rulings as applicable to our act, it is necessary carefully to note the text of the specific English statute.

A like caution is appropriate regarding many cases in our own reports which concern our succession tax of 1864, and not the legacy tax of 1862 and 1864, now re-enacted.

Money received from an executor, on compromise of a will contest, is not taxable, being neither a "legacy" nor a "distributive share."

(1877) *Page v. Rives*, 1 Hughes, 297.

Money arising from the sale of real estate under a clause in the will directing the executor to sell the real estate and "convert it into cash" is not taxable.

(1865) U. S. *v.* Watts, 1 Bond, 580.

In England, where a testator directs a sale of real estate, legacy duty is not payable; but if it is sold under direction of the court the tax applies.

(1861) *Harding v. Harding*, 7 Jur. N. S. 906, following (1853) *Hobson v. Neale*, 8 Excheq. 368.

And see (1854) *Adv.-Gen. v. Smith*, 1 Macq. App. 760, distinguishing (1848) *Atty.-Gen. v. Simcox*, 1 Excheq. 749.

But note the statute in every English case examined. Thus, ch. 184 of 55 Geo. III. expressly made the *legacy* duty applicable to cases where the will directs realty to be sold and distributed; but such proceeds are not liable to *probate* duty. This is the distinction referred to in (1870) *Forbes v. Steven*, L. R. 10 Equity, 178, where it is said (p. 185) that "probate duty is payable or not payable, according to the character of the property at the time, whereas legacy duty is payable according to what the legatee gets."

Where a power of sale is annexed to a devise of realty to enable the trustees to divide the property as personalty, legacy duty attaches.

(1835) *Adv.-Gen. v. Ramsay's Trustees*, 2 Cr. M. & R. 224.

(1847) *Adv.-Gen. v. Blackburn's Trustees*, 10 Sco. Sess. Ca. 2d ser. 166.

(1815) *Atty.-Gen. v. Holford*, 1 Price, 426.

The forgiveness of a bond debt by will is a legacy, and as such is liable to payment of the legacy duty.

(1829) *Atty.-Gen. v. Holbrook*, 3 Younge & Jervis, 114, aff'g (1823) 12 Price, 407.

But where a bequest is made in trust to pay off debts, the legacy tax must be paid.

(1835) *Foster v. Ley*, 2 Scott, 434.

(1856) *Turner v. Martin*, 3 Jur. N. S. 397.

The act does not make the estate liable when the "person possessed of such property" dies testate, if the tax would not be payable if such person died intestate.

(1882) U. S. *v.* Hunnewell, 13 Fed. Rep. 617.



A circular was issued 27 June, 1898, to collectors, prescribing rules for the collection of the tax on legacies and distributive shares.

The tax applies to estates of persons dying on or after June 13, 1898. As to death on day of passage, compare (1878 *Burgess v. Salmon*, 7 Otto, 381.

The question of constitutionality of the legacy tax will probably be raised. This tax bears more severely on the individual than any other in the act.

Prior to the income tax decision (158 U. S. 601), the U. S. Supreme Court had confined direct taxes under the Constitution to land and capitation taxes and had held a "succession" tax not to be a direct tax, but an impost or excise tax, and constitutional.

(1874) *Scholey v. Rew*, 23 Wall. 331.

But in the income tax cases they held such a tax to be direct.

(1895) *Pollock v. Farmers' L. & T. Co.*, 158 U. S. 601.

It remains to be seen if they will now include legacy taxes among the direct taxes, which must be apportioned (U. S. Const., art. I, section 9, paragraph 4).

Cf., as to State constitutionality,

(1887) *Matter of McPherson*, 104 N. Y. 306.

For an extended discussion of inheritance taxes, and as to the constitutionality of such laws, see

(1898, April 25) *Magoun v. Ill. Trust & S. B'k*, 18 Supreme Ct. Rep. 594, with cases and authorities cited.

### **LEGACY TAX A LIEN: HOW RETURNED AND PAID OR COLLECTED.**

**Sec. 30.** That the tax or duty aforesaid shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident the amount of the duty or tax assessed upon such legacy or distributive

share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered, and the tax thereon paid to such collector; and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax a receipt or receipts for the same in duplicate, which shall be prepared as hereinafter provided. Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allowed such payment by every tribunal which, by the laws of any State or Territory, is, or may be, empowered to decide upon and settle the accounts of executors and administrators. And in case such executor, administrator, or trustee shall refuse or neglect to pay the aforesaid duty or tax to the collector or deputy collector, as aforesaid, within the time hereinbefore provided, or shall neglect or refuse to deliver to said collector or deputy collector the duplicate of the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall neglect or refuse to deliver the schedule, list, or statement of such legacies,

property, or personal estate, under oath, as aforesaid, or shall deliver to said collector or deputy collector a false schedule or statement of such legacies, property, or personal estate, or give the names and relationship of the persons entitled to beneficial interests therein untruly, or shall not truly and correctly set forth and state therein the clear value of such beneficial interest, or where no administration upon such property or personal estate shall have been granted or allowed under existing laws, the collector or deputy collector shall make out such lists and valuation as in other cases of neglect or refusal, and shall assess the duty thereon; and the collector shall commence appropriate proceedings before any court of the United States, in the name of the United States, against such person or persons as may have the actual or constructive custody or possession of such property or personal estate, or any part thereof, and shall subject such property or personal estate, or any portion of the same, to be sold upon the judgment or decree of such court, and from the proceeds of such sale the amount of such tax or duty, together with all costs and expenses of every description to be allowed by such court, shall be first paid, and the balance, if any, deposited according to the order of such court, to be paid under its direction to such person or persons as shall establish title to the same. The deed or deeds, or any proper conveyance of such property or personal estate, or any portion thereof, so sold under such judgment or decree; executed by the officer lawfully charged with carrying the same into effect, shall vest in the purchaser thereof all the title of the delinquent to the property or personal estate sold under and by virtue of such judgment or decree, and shall release every other portion of such property or personal estate from the lien or charge thereon created by

this Act. And every person or persons who shall have in his possession, charge, or custody any record, file, or paper containing, or supposed to contain, any information concerning such property or personal estate, as aforesaid, passing from any person who may die, as aforesaid, shall exhibit the same at the request of the collector or deputy collector of the district, and to any law officer of the United States, in the performance of his duty under this Act, his deputy or agent, who may desire to examine the same. And if any such person, having in his possession, charge, or custody any such records, files, or papers, shall refuse or neglect to exhibit the same on request, as aforesaid, he shall forfeit and pay the sum of five hundred dollars: *Provided*, That in all legal controversies where such deed or title shall be the subject of judicial investigation, the recital in said deed shall be prima facie evidence of its truth, and that the requirements of the law have been complied with by the officers of the Government.

Act of 1862 (July 1), § 112.

Act of 1864 (June 30), § 125

R. S., § 3440.

The tax accrues on the death of the testator, but does not become payable until the legatee becomes entitled to the legacy, and the subsequent repeal of the act before the legatee becomes thus entitled, does not release the tax.

(1878) *Hellman v. U. S.*, 15 Blatchf. 13.

(1881) *U. S. v. Townsend*, 8 Fed. Rep. 306.

(1872) *May v. Slack*, 16 I. R. R. 134.

The tax is to be paid by the executor and deducted from the legacy; if he pays it, he may recover it from the legatee, by suit if necessary.

(1873) *Duvall v. Eng. E. L. Church*, 53 N. Y. 500.

A legatee is not liable *in personam* for the tax; as far as the act imposes such a liability, it is on the executor.

(1877) *U. S. v. Allen*, 9 Ben. 154.

But under a "succession" to real estate (§§ 126 to 137 of Act of June 30, 1864), it was held otherwise.

(1879) *U. S. v. Tappan*, 10 Ben. 284.

As to form of protest on payment and statute of limitations on suit brought for recovery.

(1879) *Wright v. Blakeslee*, 101 U. S. 174.

Procedure by U. S. to collect legacy tax.

(1886) *U. S. v. Truck*, 28 Fed. Rep. 846.

### EXISTING LAWS MADE APPLICABLE TO THIS ACT.

**Sec. 31.** That all administrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed are hereby made applicable to this Act.

This act does not repeal any provisions of the existing laws.

The amendment and repeal of United States statutes have rarely been done with care, and it is often difficult to know how much of an act is left when some later act sweepingly declares that "all acts and parts of acts inconsistent herewith are hereby repealed."

When the old laws regarding manufactures and special taxes were practically repealed in 1870, some provisions were left which, however meaningless they may have been in the interval, may now become important to be dealt with in connection with the revival of these taxes. For that reason, it is desirable to examine the existing statutes with care, and it will be valuable to look into the older decisions and departmental rulings, even where the provisions involved have been altered or repealed. The Internal Revenue Record, especially in the earlier volumes, 1865-1870, is rich in such material.

In construing a statute, the courts will consider not only the act itself and any legislation to which it is amendatory, but also the content and history of any laws that formerly existed on the same subject.

(1898) *U. S. v. Wong Kim Ark*, 18 Sup. Ct. Rep. 456.

### CLASSIFICATION OF INTERNAL REVENUE TAXES.

I. Special Taxes on Occupations. These are definite in amount.

II. Documentary and Proprietary Stamp Taxes. These are small in amount, though large in aggregate, and are capable of being definitely ascertained by taxpayer.

III. Taxes on Liquor, Tobacco, Oleomargarine, Filled Cheese and Mixed Flour. These are quasi-police regulations in the guise of revenue legislation, *i. e.*, the protection of the community runs with the thought of revenue.

IV. Taxes on Gross Receipts of Companies, on Industrial Insurance, Telephone Messages and Legacies. These are assessed by the government on reports made to its officers.

Taxes of the first and second classes are left by the government to be paid by the taxpayer without much supervision, under the constraint of punishment as for a misdemeanor, on failure to pay, and disqualification of unstamped papers. The taxpayer voluntarily complies with the law, or if he fails to do so, either complies on being informed of his neglect or is indicted for intent to evade the act and stands his trial in the usual method of criminal procedure. Civil litigation on questions of definition and construction will also be plentiful.

Taxes of the third class are enforced under strict supervision of the government officers who are more concerned to see the laws obeyed than to collect the revenue, and the laws are framed to discourage certain harmful lines of business rather than to provide revenue. Hence, in this class of taxes the usual legal procedure is that of indictment and criminal trial.

Taxes of the fourth class are those over which contests are more likely to arise between the government and the taxpayer, for in these cases only is there a direct assessment by the government.

The government has the right

1. To examine books, premises, parties, etc., for information.  
(1877) U. S. *v.* Mann, 5 Otto, 580, and cases cited on page 9, *ante*.
2. To assess the tax where it is not definitely fixed in the act.  
(1881) U. S. *v.* Rindskopf, 15 Otto, 418, 422.
3. To distrain for its collection.  
(1870) Treat *v.* Staples, 1 Holmes, 1: R. S., § 3187 *et seq.*
4. To sue civilly for its collection.  
(1867) U. S. *v.* Washington, 2 Cliff. 601.  
(1873) Dollar Sav. Bank *v.* U. S., 19 Wall. 227.
5. To indict criminally for neglect or failure to obey.  
This act *passim*.
6. To refund a tax wrongfully collected.  
(1877) U. S. *v.* Kaufman, 6 Otto, 567.  
(1879) First Nat. Bk. *v.* U. S., 15 Ct. of Cl. 225.

7. To grant an allowance of drawback on exportation.  
§ 26 this act.

The taxpayer may

1. Protest on payment of tax as levied or assessed.

(1879) *Wright v. Blakeslee*, 11 Otto, 174.

2. Appeal, after payment, for a refund.

(1871) *Erschine v. Hohnback*, 14 Wall. 613.

(1868) *Hendy v. Soule*, Deady, 400.

3. Sue for reimbursement within time limit.

(1869) *Lauer v. U. S.*, 5 Ct. of Cl. 447.

(1872) *Francis v. Slack*, 4 Cliff. 186.

The Act of 1864 was in the U. S. Supreme Court for construction on this point as recently as February 21, 1898, when a decision was made in *Commissioners of Sinking Fund v. U. S.*, 18 Supreme Ct. Rep. 361.

But he cannot

- (a) enjoin the collection of the tax,

(1866) *Roback v. Taylor*, 2 Bond, 36,

(1877) *Alkan v. Bean*, 8 Biss. 83; or

- (b) replevy on collection.

(1870) *Treat v. Staples*, 1 Holmes, 1.

A collector who seizes goods for violation of revenue law when there is no violation is liable in tort.

(1867) *Cardinel v. Smith* Deady, 197.

## LOANS, CERTIFICATES OF INDEBTEDNESS.

**Sec. 32.** That the Secretary of the Treasury is authorized to borrow from time to time, at a rate of interest not exceeding three per centum per annum, such sum or sums as, in his judgment, may be necessary to meet public expenditures, and to issue therefor certificates of indebtedness in such form as he may prescribe and in denominations of fifty dollars or some multiple of that sum; and each certificate so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of

the Treasury may prescribe: *Provided*, That the amount of such certificates outstanding shall at no time exceed one hundred millions of dollars; and the provisions of existing law respecting counterfeiting and other fraudulent practices are hereby extended to the bonds and certificates of indebtedness authorized by this Act.

### LOANS: BONDS.

**Sec. 33.** That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time as the proceeds may be required to defray expenditures authorized on account of the existing war (such proceeds when received to be used only for the purpose of meeting such war expenditures) the sum of four hundred million dollars, or so much thereof as may be necessary, and to prepare and issue therefor, coupon or registered bonds of the United States in such form as he may prescribe, and in denominations of twenty dollars or some multiple of that sum, redeemable in coin at the pleasure of the United States after ten years from the date of their issue, and payable twenty years from such date, and bearing interest payable quarterly in coin at the rate of three per centum per annum; and the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: *Provided*, That the bonds authorized by this section shall be first offered at par as a popular loan under such regulations, prescribed by the Secretary of the Treasury, as will give opportunity to the citizens of the United States to participate in the subscriptions to such loan, and in allotting said bonds the several subscriptions of individuals shall be first accepted, and the subscriptions for the lowest amounts shall be first allotted: *Provided further*, That



any portion of any issue of said bonds not subscribed for as above provided may be disposed of by the Secretary of the Treasury at not less than par, under such regulations as he may prescribe, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds and certificates herein authorized is hereby appropriated out of any money in the Treasury not otherwise appropriated, to pay the expense of preparing, advertising, and issuing the same.

#### COINAGE OF SILVER BULLION.

**Sec. 34.** That the Secretary of the Treasury is hereby authorized and directed to coin into standard silver dollars as rapidly as the public interests may require, to an amount, however, of not less than one and one-half millions of dollars in each month, all of the silver bullion now in the Treasury purchased in accordance with the provisions of the Act approved July fourteenth, eighteen hundred and ninety, entitled "An Act directing the purchase of silver bullion and the issue of Treasury notes thereon, and for other purposes," and said dollars, when so coined, shall be used and applied in the manner and for the purposes named in said Act.

#### MIXED FLOUR.

**Sec. 35.** That for the purposes of this Act the words "mixed flour" shall be understood to mean the food product made from wheat mixed or blended in whole or in part with any other grain or other material, or the manufactured product of any other grain or other material than wheat.

**Mixed Flour.**

These sections are entirely new. When the act was under consideration in the Senate, May 31, 1898, Mr. Mason of Illinois offered an amendment embodying these provisions, and explained that they contained the substance of a bill theretofore advocated by the National Board of Trade. It was presented here as an amendment because, being, like the Oleomargarine Law, a revenue measure, it could not take the form of original legislation in the Senate. Yet the main object was not revenue, either here or in the oleomargarine and filled-cheese bills, but rather the protection of the public from the adulteration of foods. It was shown by analyses and from commercial documents that wheat flour is very largely adulterated with corn flour (a by-product of glucose factories), ground barytes, ground white-clay and mineraline. Even where the resulting mixture is harmless, it is a deception and a fraud. The honest miller suffers from unfair competition and the export trade is injured by the resulting bad reputation of American flours. For the interesting details of this matter, see Congressional Record, pp. 5988, 6163, 6379.

The Senate debate shows that the purpose to be accomplished is really a police regulation of the business, but under our system this can only be attained in the guise of a revenue measure, and the courts, in construing the act, will necessarily treat it simply as a revenue measure.

(1897) *In re* Kollock, 165 U. S. 526 (oleomargarine).

In the drafting of these sections, use was made of some provisions of an analagous nature already found in the statutes regarding tobacco, and more especially those concerning oleomargarine and filled cheese.

The statute affecting tobacco is found in the R. S., §§ 3355-3386 and amendments; that affecting oleomargarine is the Act of August 2, 1886, chap. 840; and that affecting filled cheese is Act of June 6, 1896, chap. 337.

Compare §§ 1 and 2 Oleo. Act, and §§ 1 and 2 Cheese Act.

**SPECIAL TAX ON MAKERS AND PACKERS.**

**Sec. 36.** That every person, firm, or corporation, before engaging in the business of making, packing, or repacking mixed flour, shall pay a special tax at the rate of twelve dollars per annum, the same to be paid and posted in

accordance with the provisions of sections thirty-two hundred and forty-two and thirty-two hundred and thirty-nine of the Revised Statutes, and subject to the fines and penalties therein imposed for any violation thereof.

§ 3242 makes it an offense punishable by fine and imprisonment to engage in liquor business without having paid the special tax.

§ 3239 requires the special tax certificate to be conspicuously displayed in the establishment or place of business.

As to special tax, see notes to § 2, *ante*.

Compare §§ 3 and 4 Oleo. Act and §§ 3 and 4 Cheese Act, *supra*.

### PACKAGES TO BE MARKED: PENALTY.

**Sec. 37.** That every person, firm, or corporation making, packing, or repacking mixed flour shall plainly mark or brand each package containing the same with the words "mixed flour" in plain black letters not less than two inches in length, together with the true weight of such package, the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed. In addition thereto, such maker or packer shall place in each package a card not smaller than two inches in width by three inches in length, upon which shall be printed the words "mixed flour," together with the names of the ingredients composing the same, and the name of the maker or packer, and the place where made or packed. Any person, firm, or corporation making, packing, or repacking mixed flour hereunder, failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or be imprisoned not less than sixty days nor more than one year.

§ 6 Oleo. Act and § 6 Cheese Act, *supra*.

**SALES IN UNMARKED, FALSELY MARKED, OR USED  
PACKAGES: PENALTY.**

**Sec. 38.** That all sales and consignments of mixed flour shall be in packages not before used for that purpose; and every person, firm, or corporation knowingly selling or offering for sale any mixed flour in other than marked and branded packages, as required by the provisions of this Act relating to the manufacture and sale of mixed flour, or who packs in any package or packages any mixed flour in any manner contrary to the provisions relating to the manufacture and sale of mixed flour of this Act, or who falsely marks or brands any package or packages containing mixed flour, or unlawfully removes such marks or brands, shall, for each such offense, be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or by imprisonment not less than thirty days nor more than one year.

Compare § 3363 R. S., as amended by Act of 1890, ch. 1244, § 31, and §§ 6 and 15 Oleo. Act and § 6 Cheese Act, *supra*.

(1869) U. S. v. Imsand, 1 Woods, 581.

**SPECIAL LABEL: NOTICE OF COMPLIANCE AND CAUTION.**

**Sec. 39.** That in addition to the branding and marking of mixed flour as herein provided, there shall be affixed to the packages containing the same a label in the following words: " Notice. — The manufacturer (or packer, as the case may be) of the mixed flour herein contained has complied with all the requirements of law. Every person is cautioned not to use this package or label again or to remove the contents without destroying the revenue stamp thereon, under the penalty prescribed by law in such cases." Every person, firm, or corporation failing or neglecting to affix such label to any package contain-

ing mixed flour made or packed by him or them, or who removes from any such package any label so affixed, shall, upon conviction thereof, be fined not less than fifty dollars for each label so removed.

Compare § 3364 R. S. and § 7 Oleo. Act and §§ 7 and 8 Cheese Act, *supra*.

That oleomargarine and filled cheese have been taken as the model for mixed flour is plain.

Just as in the case of taxes upon other lines of business or industry, this new scheme for taxing "mixed flour" abounds in misdemeanors and penalties.

#### MISDEMEANORS AND PENALTIES.

*Section 37* makes the failure to mark or brand each package or to place the card in each package, whether on making, packing, or repacking, a misdemeanor, punishable on conviction by fine from \$250 to \$500, or from sixty days to one year imprisonment. There is here *no question of intent*.

*Section 38* makes packing in packages already used or knowingly selling such, or falsely branding or marking packages, or unlawfully removing marks or brands a misdemeanor, punishable on conviction by fine of from \$250 to \$500, and imprisonment from sixty days to one year. Intent is clearly implied here.

*Section 39* makes failure to affix the "caution" notice to package punishable by fine of not less than \$50 for each label. No question of intent.

*Section 40* prescribes the size of original packages and how repacking shall be done, and makes a violation (no question of intent) punishable by fine from \$250 to \$500, or by imprisonment not more than one year.

*Section 42* makes the purchase, receipt for sale or repacking (no question of intent) of mixed flour, unbranded, etc., punishable by fine of \$50 to \$500.

*Section 43* makes purchase, etc., from maker who has not paid the tax an offense punishable by fine not less than \$50. No question of intent. In this last case the purchased goods are to be forfeited to U. S.

For increase of penalties on subsequent convictions, see § 48, this Act.

**SIZE OF PACKAGE: RATE OF TAX: REPACKING.**

**Sec. 40.** That barrels or other packages in which mixed flour may be packed shall contain not to exceed one hundred and ninety-six pounds; that upon the manufacture and sale of mixed flour there shall be levied a tax of four cents per barrel or other package containing one hundred and ninety-six pounds or more than ninety-eight pounds; two cents on every half barrel or other package containing ninety-eight pounds or more than forty-nine pounds; one cent on every quarter barrel or other package containing forty-nine pounds or more than twenty-four and one-half pounds; and one-half cent on every one-eighth barrel or other package containing twenty-four and a half pounds or less, to be paid by the person, firm, or corporation making or packing said flour. The tax levied by this section shall be represented by coupon stamps, and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff shall, so far as applicable, be made to apply to stamps provided in this section: *Provided*, That when mixed flour, on the manufacture and sale of which the tax herein imposed has been paid, is sold and then repacked without the addition of any other material, such repacked flour shall not be liable to any additional tax; but the packages containing such repacked flour shall be branded or marked as required by the provisions of section thirty-seven of this Act, and shall contain the card provided for in section thirty-seven hereof; and in addition thereto the person, firm, or corporation repacking mixed flour shall place on the packages containing the same a label in the following words: "Notice. — The contents of this package have been taken from a regular statutory package, upon which the tax has been duly paid." Any person violating the pro-

visions of this section shall, upon conviction thereof, be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or by imprisonment not to exceed one year.

Compare § 3369 R. S. and § 8 Oleo. Act and § 9 Cheese Act, *supra*.

#### ASSESSMENT OF TAX ON FLOUR SOLD UNSTAMPED.

**Sec. 41.** That whenever any person, firm, or corporation sells, consigns, or removes for sale, consignment, or consumption any mixed flour upon which the tax required by this Act has not been paid, it shall be the duty of the Commissioner of Internal Revenue, for a period of not more than one year after such sale, consignment, or removal, upon satisfactory proof, to estimate the amount of tax which should have been paid, and to make an assessment therefor and certify the same to the collector of the proper district. The tax so assessed shall be in addition to the penalties imposed by this Act for an unauthorized sale or removal.

Compare § 3371 R. S. and § 9 Oleo. Act and § 10 Cheese Act, *supra*.

See R. S. 1878, § 3437, based on 2 March, 1867, ch. 169, § 5; 14 Stat. 472; 6 June, 1872, ch. 315, § 31; 17 Stat. 252; 24 Dec. 1873, ch. 13, § 7; 17 Stat. 403.

#### IMPORTED MIXED FLOUR.

**Sec. 42.** That all mixed flours, imported from foreign countries, shall, in addition to any import duties imposed thereon, pay an internal-revenue tax equal in amount to the tax imposed under section forty of this Act, such tax to be represented by coupon stamps, and the packages containing such imported mixed flour shall be marked, branded, labeled, and stamped as in the case of mixed flour made or packed in the United States. Any person, firm, or corporation purchasing or receiving for sale or

repacking any such mixed flour which has not been branded, labeled, or stamped, as required by this Act, or which is contained in packages which have not been marked, branded, labeled, or stamped, as required by this Act, shall, upon conviction, be fined not less than fifty dollars nor more than five hundred dollars.

Compare § 3377 R. S., and § 3366 R. S., and §§ 10 & 11 Oleo. Act, and §§ 11 & 12 Cheese Act, *supra*.

#### **DEALING WITH MAKER OR PACKER WHO HAS NOT PAID THE TAX.**

**Sec. 43.** That any person, firm, or corporation knowingly purchasing or receiving for sale or for repacking and resale any mixed flour from any maker, packer, or importer, who has not paid the tax herein provided, shall, for each offense, be fined not less than fifty dollars, and forfeit to the United States all the articles so purchased or received, or the full value thereof.

Compare § 3367 R. S., and §§ 12 & 15 Oleo. Act, and §§ 13 & 16 Cheese Act, *supra*.

#### **EXPORT.**

**Sec. 44.** That mixed flour may be removed from the place of manufacture or from the place where packed for export to a foreign country without payment of tax or affixing stamps or label thereto, under such regulation and the filing of such bond and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Every person, firm, or corporation who shall export mixed flour shall plainly mark on each package containing the same the words "mixed flour," and the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed, in accordance with the pro-



visions of sections thirty-six to forty-five, inclusive, of this Act.

Compare § 3385 R. S. and § 16 Oleo. Act, *supra*.

See Stat. 1897, ch. 11, § 15 (55th Cong. Sess. 1).

#### STAMP ON EMPTY PACKAGE TO BE DESTROYED.

**Sec. 45.** That whenever any package containing mixed flour is emptied it shall be the duty of the person in whose possession it is to destroy the stamp thereon. Any person disposing of such package without first having destroyed the stamp or mark or marks thereon shall, upon conviction, be punished by a fine not exceeding the sum of twenty-five dollars.

Compare § 3376 R. S., and § 13 Oleo. Act, and § 14 Cheese Act, *supra*.

#### ENFORCEMENT OF PENALTIES.

**Sec. 46.** That all fines, penalties, and forfeitures imposed by section thirty-six to section forty-five, both inclusive, of this Act may be recovered in any court of competent jurisdiction.

Compare § 19 Oleo. Act, and § 17 Cheese Act, *supra*.

#### RULES AND REGULATIONS.

**Sec. 47.** That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying into effect the provisions relating to the manufacture and sale of mixed flour, being section thirty-five to section forty-nine, both inclusive, of this Act, and the said Commissioner of Internal Revenue, by and with the approval of the Secretary of the Treasury, for the purpose of carrying said last-mentioned provisions of this Act into effect,

is hereby authorized to employ such additional clerks and agents as may be necessary for that purpose, not to exceed twenty in number.

Compare § 20 Oleo. Act, and § 18 Cheese Act, *supra*.

§ 3173 R. S., requiring the production of books, does not apply to dealers in a new commodity first taxed by the Act of 1886 (24 Stat. 209). (1894) *In re* Kearns, 64 Fed. Rep. 481.

It was held in regard to oleomargarine that leaving the matter of designating the marks, brands and stamps to the commissioner involved no unconstitutional delegation of power, being only an administrative function.

(1897) *In re* Kollock, 165 U. S. 526.

## SECOND OFFENSE: IMPRISONMENT.

**Sec. 48.** That any person, firm, or corporation found guilty of a second or any subsequent violation of any of the provisions of section thirty-six to section forty-five, both inclusive, relating to the manufacture and sale of mixed flour as aforesaid, of this Act shall, in addition to the penalties herein imposed, be imprisoned not less than thirty days nor more than ninety days.

See notes as to penalties and misdemeanors under § 39.

## TAX ON MIXED FLOUR TO TAKE EFFECT AUGUST 12, 1898.

**Sec. 49.** That the provisions of this Act relating to the manufacture and sale of mixed flour shall take effect and be in force sixty days from and after the date of the passage of this Act; and all packages of mixed flour found on the premises of any person, firm, or corporation on said day, who has made, packed, or repacked the same, on which the tax herein authorized has not been paid, shall be deemed taxable under the provisions of section thirty-six to section forty-five, both inclusive, of this Act, and shall be taxed and have affixed thereon such marks,

brands, labels, and stamps as required by the provisions of said sections or by the rules and regulations prescribed by the Commissioner of Internal Revenue, under authority of this Act.

These provisions take effect Aug. 12, 1898.

Compare § 21 Oieo. Act, and § 19 Cheese Act, *supra*.

### IMPORT DUTY ON TEA.

**Sec. 50.** That there shall be levied, collected, and paid upon tea when imported from foreign countries a duty of ten cents per pound.

**Tea.**

This is an import or tariff duty.

### ACT TO TAKE EFFECT JUNE 14, 1898.

**Sec. 51.** That this Act shall take effect on the day next succeeding the date of its passage except as otherwise specially provided for.

Approved, June 13, 1898.

(1878) Burgess v. Salmon, 7 Otto, 381.

Cf:

§ 2, specifying July 1, 1898.

§ 3, specifying April 14, 1898

§ 3, specifying day succeeding passage.

§ 3, specifying 30 days after passage.

§ 4, specifying July 1, 1898.

§ 5, specifying until new stamps are ready (indefinite).

§ 6, specifying July 1, 1898.

§ 13, specifying "hereafter."

§ 18, specifying July 1, 1898.

§ 20, specifying July 1, 1898.

§ 24, specifying July 1, 1898.

§ 25, specifying July 1, 1899.

Sched. A, par. 1, July 1, 1898.

Bills of Exchange, July 1, 1898.

Telephone, etc., first 15 days of each month.

Sched. B, last par., July 1, 1898.

§ 26, July 1, 1898.

§ 28, July 1, 1898.

§ 49, 60 days after passage.

## BIBLIOGRAPHY.

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The following does not pretend to be exhaustive and is merely offered as suggestive:

**Acts of Congress.** The Statutes at Large from 1862; as well as R. S. of 1878, and amendments, because of many changes in the early law.

**Boutwell, George S.** The Com'r who organized the Dept., published a Manual of the Direct and Excise Tax System of the U. S. with regulations, rulings, etc. 4th ed., 333 pp. 1864.

**Boutwell, George S.** The Tax-payer's Manual, being an indexed compilation of revenue laws. (pp. 180). Boston, 1866.

**Redfield, Amasa A.** Hand-book of the U. S. Tax Law of 1862-63, with notes.

**Davidge, J. B. F., & Kimball, I. G.** Compendium of Internal Revenue Laws with Decisions, Rulings, Instructions, Regulations Forms and (pp. 859). Washington, D. C., 1871.

**Internal Revenue Manual.** A manual issued under the direction of the Commissioner for the information and guidance of officers and agents. It is useful in conjunction with the statute and the officially promulgated Rules of the Revenue office. The early editions show the attitude of the Department in the beginning of the system.

**Edwards, Charles.** A Practical Treatise of the Stamp Act of July 1, 1862 (399 pp., N. Y. 1863). This book is chiefly valuable as an attempt to give English precedents. It draws largely from two standard works (Collins and Tilsley), which are less likely to be accessible to American lawyers, but should be directly consulted where possible.

**Bump, Orlando F.** Internal Revenue Statutes, with notes of decisions, rulings, etc. (pp. 430, N. Y. 1870). He culled the best decisions and rulings theretofore made in the Treasury Department. These rulings are not always consistent, and are often disapproved by the courts, but where they touch points not definitely settled by the courts they are useful.

**Internal Revenue Record.** An unofficial periodical publication, begun in 1865. This is frequently referred to as though it were an authority, and it purports to give the rulings and regulations of the Department. These frequently appear to be answers to hypothetical questions propounded to the Commissioner. They are of very unequal value and the best have been cited by Bump or are to be found in the official collections. The Record doubtless preserved some fugitive matters which will repay examination and afford precedents in the administration of the Bureau.

**Collection of Circulars and Specials,** issued by the Office of Internal Revenue to January 1, 1871 (pp. 334), contains numbered circulars (1-91) beginning July 1, 1863; numbered specials (1-85) beginning July 6, 1864; and the completest extant collection of 69 unnumbered circulars, arranged chronologically with index. (Government Printing Office, 1871)

**Emerson, Charles N.** New Internal Revenue Guide to the Act of July, 1868 (pp. 88), bound together with the author's Hand-book of the Internal Revenue for Popular Use (pp. 85). Springfield, 1868).

**Dresser, Horace.** The Internal Revenue Laws as amended to July, 1866, with marginal references, index, and tables of taxes and exemptions. (A compilation, pp. 228.) N. Y. 1866. Later editions in 1870 and 1872 adapted to the amended statutes.

**Opinions of Attorneys-General,** A Digest of. 1789-1881. This does not disclose anything likely to be of value under the present law.

**Parsons, Theophilus F.** In the 5th edition of Parsons on Contracts there was a chapter X. in Part II., having 13 sections and dealing fully with the law of stamps in its application to all kinds of instruments and contracts. Vol. III., pp. 286-349. It was omitted from the 6th edition in 1873 and all subsequent editions.

**Eldridge, Charles Wesley.** The U. S. Internal Revenue Tax System embracing the law as amended, with rulings, regulations, annotations, practice and forms and with a historical sketch (pp. 722, Boston and New York, 1895.

**Burroughs, W. H.** A Treatise on the Law of Taxation. New York, 1877. Includes two chapters (pp. 102) on U. S. Internal Revenue with citations and discussion.

**Morgan's Digest** of U. S. Tariff and Customs Laws.

**Gould, John M., and Tucker, George F.** The Federal Income Tax Explained, 1894, containing valuable notes on successions, legacies, enforcement and remedies.

**Foster, Roger and Abbot, Everett V.** Income Tax Law of 1894. Boston, 1895. Valuable for same reasons as Gould and Tucker.

**Myer's Federal Decisions.** Title: Internal Revenue.

**Hilliard, Francis.** Law of Taxation (chapter II.) Boston, 1875.

**Elmes, Webster.** The Executive Departments of the U. S. (pp. 557). Wash., D. C., 1879.

**Gerard, James W.** Titles to Real Estate, chap. xxvii., treats of stamping of instruments, succession duties, seizure of land for non-payment of revenue tax and confiscation of land for violation of revenue laws.

**Roe, Edward T.** Criminal Procedure of U. S. Courts. Chicago, 1887, pp. 274.

**Mills, Charles H.** The Taxable Transfer Act of N. Y. L. 1892, ch. 399, and amendments (Albany, 1896).

**Greene, H. Noyes** The Law of Taxable Transfers, State of N. Y., art. x. of chap. xxiv. of the General Laws, as amended (Albany, 1897).

**Wells, David A.** Principles of Taxation. Now being published in parts in Popular Sci. Mo.

**Periodicals.** These contain special articles which may be of value, e. g.:

The Internal Revenue System, by J. Schouler, Amer. Law Rev., Jan., 1868. Unstamped Instruments as Evidence, 7 Alb. L. J. 49. Stamps, Amer. Law Reg. (N. S.), XI, 137. The Taxing Power; its Constitutional Limitations, 42 Alb. L. J. 64; The New Death Duties in England. No. Amer. Rev., Jan., 1895.

## BRITISH WORKS.

**Copinger, Walter Arthur.** Tables of Stamp Duties from 1815 to the present time. London, 1878.

**Collins, George William.** The Stamp Laws considered with a view to their influence on the admission of deeds and other writings in evidence. The Probate and Legacy Duty acts, and the cases decided thereon [with the text of the laws], pp. 627. London, 1841.

**Tilsley, Hugh.** A Treatise on the Stamp Laws in Great Britain and Ireland; being an analytical digest of the statutes and cases, with practical observations thereon by Hugh Tilsley, Assistant Solicitor of Stamps and Taxes (pp. 892). London, 1847. An excellent work.

**Griffith, Gualter C.** A Digest of Stamp Duties. London.

**Heraud, J. A.** A Digest of the Stamp Laws. London, 1801.

**Dowell, Stephen,** Assistant Solicitor of Inland Revenue. A History of Taxation and Taxes in England from the earliest times to the present day. 4 vols. London, 1884.

**Dowell, Stephen.** A History and Explanation of the Stamp Duties and the Stamp Laws at present in force in the United Kingdom. London, 1873.

**Chitty, Joseph, Jr.** Law of Contracts, 13th ed., London, 1896, chap. vi., pp. 145-168, on the Stamping of Contracts.

**Heron, D. Caulfield.** History of Jurisprudence, *sub cap.*, Taxation. London, 1860.

**Edwards, Isaac.** A Treatise on Bills of Exchange, Promissory Notes, etc., 3d ed., 1882, chap. xiv., on Stamp Acts.

**Byles, Sir John Barnard.** Bills of Exchange, etc., 15th ed., London, 1891, chap. ix., on the Stamp Law.

**Chitty's Statutes**, 5th ed., tit. Stamps.

**Hudson, Corrie.** A Practical Guide to the Payment of Legacy, Succession, Probate and Account Duties, etc., 10th ed., by Layton (595 pp). London, 1896.

**Hanson, Alfred.** The Acts relating to Estate, Probate, Legacy and Succession Duties, 4th ed., by Dibdin and Errington (pp. 790). London, 1897. An excellent work.

**Sheiford, Leonard.** The Law relating to the Probate, Legacy and Succession duties, 2d ed. (pp. 667). London, 1861.

**Alpe's Law of Stamp Duties.**

**Highmore's Stamp Acts.**

**British Stamp Acts:**

55 Geo. III., c. 184.

7 & 8 Geo. IV., c. 55.

16 & 17 Vict., c. 51 (1853).

33 & 34 Vict., c. 97 (1870).

54 & 55 Vict., c. 39 (1891).

## NOTE.

The Commissioner of Internal Revenue issued a circular July 14, 1898, containing a digest of the departmental rulings to date.

In the Supreme Court of New York, 1st Dept., on July 14, 1898, Judge Pryor refused to issue a writ of *mandamus* to compel the Register to file a certificate of amount due on a chattel mortgage as provided by statute, and held the certificate in effect a renewal of the mortgage and requiring a mortgage stamp. *Consumers' Brewing Co. v. Fromme.*

See p. 77, *ante*.



## SUMMARY OF TAXES.

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### SPECIAL TAXES (ANNUAL) ON PERSONS (OCCUPATIONS.)

Bankers using capital (including surplus) up to	
\$25,000 .....	\$50 00
exceeding \$25,000, per \$1,000.....	2 00
Brokers (stock, etc.).....	50 00
Pawnbrokers.....	20 00
Commercial brokers.....	20 00
Custom-house brokers.....	10 00
Theaters, museums, in cities of 25,000.....	100 00
Circuses.....	100 00
Other shows and exhibitions.....	10 00
Bowling alleys and billiard-rooms, per alley or table,	5 00
Dealers in leaf tobacco, annual sales, 50,000 lbs. or	
less.....	6 00
50,000 to 100,000 lbs.....	12 00
over 100,000 lbs.....	24 00
Dealers in tobacco, annual sales, 50,000 lbs. or more,	12 00
Manufacturers of tobacco, annual sales up to 50,000	
lbs.....	6 00
50,000 to 100,000 lbs.....	12 00
over 100,000 lbs.....	24 00
Manufacturers of cigars, annual sales up to 100,000	
cigars.....	6 00
100,000 to 200,000 cigars.....	12 00
over 200,000 cigars.....	24 00
Manufacturers and packers of mixed flour .....	12 00

**PAPERS, DOCUMENTS, ETC.**

Bonds, debentures and certificates of indebtedness issued after July 1, 1898, per \$100 face.....	\$0 05
Certificates of stock, on organization or reorganization, original issue, per \$100 face.....	05
Sales and transfers of stocks, per \$100 face.....	02
Sales of products on exchange, per \$100 value.....	01
Check, certificate of deposit, sight draft or order...	02
Bill of Exchange (inland), certificate of deposit (interest), time draft or order, P. O. money order, per \$100.....	02
Bill of Exchange (foreign), letter of credit, telegraph or express money order, per \$100.....	04
In sets of two or more, per bill, per \$100.....	02
Promissory notes, per \$100.....	02
Bill of lading (for export).....	10
Freight or express receipt.....	01
Telephone messages, charge 15 cents.....	01
Bond.....	50
Certificate of profits or interest, per \$100 face.....	02
Marine certificate of damages, etc.....	25
Certificates, all others.....	10
Charter-party, vessel not more than 300 tons.....	3 00
300-600 tons.....	5 00
over 600 tons.....	10 00
Broker's note.....	10
Deed or conveyance, from \$100 to \$500.....	50
each additional \$500.....	50
Telegram.....	01
Custom-house entry for consumption or warehouse, up to \$100.....	25
\$100 to \$500.....	50
over \$500.....	1 00
for withdrawal.....	50
Insurance (life) per \$100 risk.....	08

# SUMMARY OF TAXES.

121

Insurance (marine, inland, fire), per \$1 premium....	\$0 00½
Insurance (casualty, fidelity, guarantee) per \$1 premium .....	00½
Lease (real estate or assignment of), up to one year,	25
1 year to 3 years .....	50
over 3 years .....	1 00
Manifest or clearance,	
vessel up to 300 tons.....	1 00
300-600 tons.....	3 00
over 600 tons.....	5 00
Mortgage (real or personal) or assignment of,	
\$1,000 to \$1,500.....	25
each \$500 above \$1,500 .....	25
Insurance and assignment of policy.	
Same rates as original.	
Passage ticket to foreign ports (except British N. A.)	
up to \$30.....	1 00
\$30 to \$60.....	3 00
over \$60.....	5 00
Proxy .....	10
Power of attorney.....	25
Parlor-car and sleeping-car tickets.....	01
Protest.....	25
Warehouse receipt.....	25

## ARTICLES USED AND CONSUMED.

Beer, lager beer, ale, porter and other similar fermented liquors, per barrel .....	2 00
Tobacco and snuff, per pound.....	12
Cigars, more than three lbs. per M.; per M.....	3 60
Cigars not more than three lbs. per M.; per M.....	1 00
Cigarettes, more than three lbs. per M.; per M.....	3 60
Cigarettes, not more than three lbs. per M.; per M.,	1 50
Mixed flour, per barrel, 98 to 196 lbs.....	04
Tea, per pound, import .....	10

## Medicinal, proprietary articles:

Selling at retail not more than 5 cents.....	\$0 1-8
5-10 cents.....	1-4
10-15 cents.....	3-8
15-25 cents.....	5-8
each additional 25 cents .....	5-8

## Perfumery, cosmetics, etc.:

Selling at retail not more than 5 cents.....	1-8
5-10 cents.....	1-4
10-15 cents.....	3-8
15-25 cents.....	5-8
each additional 25 cents .....	5-8

Chewing gum, per \$1 of retail value..... 04

Wines, bottled for use, pint or less ..... 01  
 more than pint ..... 02

## INHERITANCES.

Legacies and distributive shares where personal estate is  
 \$10,000-\$25,000:

1. Lineal issue, lineal ancestor, brother, sister, per  
 \$100 clear value..... 75
2. Descendant of brother or sister, per \$100 clear  
 value..... 1 50
3. Uncle or aunt or descendant of same, per \$100  
 clear value..... 3 00
4. Great-aunt, great-uncle or descendant of same,  
 per \$100 clear value..... 4 00
5. In any other degree or stranger, or corpora-  
 tion, per \$100 clear value..... 5 00

Husband or wife exempt.

Estates between \$25,000 and \$100,000, above rates multi-  
 plied by 1 1-2.

Estates between \$100,000 and \$500,000, above rates multi-  
 plied by 2.

Estates between \$500,000 to \$1,000,000, above rates multiplied by 2 1-2.

Estates exceeding \$1,000,000, above rates multiplied by 3.

#### ON GROSS RECEIPTS.

Sugar-refining, gross receipts, excess over \$250,000, 1-4 of 1 per cent.

Petroleum-refining and pipe lines, gross receipts, excess over \$250,000, 1-4 of 1 per cent.

Industrial life insurance on first weekly premiums, 40 per cent.



## TABLE OF CASES.

---

	PAGE.
<b>A.</b>	
Abraham <i>v.</i> Dubois, 4 Campbell, 269 .....	38
Adams <i>v.</i> Dale. 29 Ind. 273.....	21, 29
Adv.-Gen. <i>v.</i> Blackburn's Trust, 10 Sco. Sess. Ca., 2d. Ser. 166...	94
Adv.-Gen. <i>v.</i> Ramsey's Trust, 2 Cr. M. & R. 224 .....	94
Adv.-Gen. <i>v.</i> Smith, 1 McQueen's App. 760.....	94
Alkan <i>v.</i> Bean, 8 Biss. 83 ...	101
Arthur <i>v.</i> Fox, 108 U. S. 125 .....	85
Ashley <i>v.</i> Boon, 1 Ch. 568.....	43
Atty.-Gen. <i>v.</i> Holbrook, 3 Younge & J. 114.....	94
Atty.-Gen. <i>v.</i> Holford, 1 Price, 426 .....	94
Atty.-Gen. <i>v.</i> Munby, 3 H. & N. 826 .....	92
Atty.-Gen. <i>v.</i> Napier, 6 Exch. 217.....	92
Atty.-Gen. <i>v.</i> Simcox, 1 Exch. 749 .....	94

<b>B.</b>	
Bailey <i>v.</i> Clark, 21 Wall. 284 . . . . .	8
Baird <i>v.</i> Pridemore, 31 How. Pr. 359 .....	20, 41
Baker <i>v.</i> Baker, 6 Lans. 509 .....	41
Ballard <i>v.</i> Burnside, 49 Barb. 102 .....	21, 28, 60
Bank of Orleans <i>v.</i> Merrill, 2 Hill, 295.....	60
Barney <i>v.</i> Ivins, 22 Iowa, 173 .....	71
Bates <i>v.</i> Mayor, etc., of Mobile, 46 Ala. 158 .....	6
Bathe <i>v.</i> Taylor, 15 East, 412 .....	22
Bayley <i>v.</i> McKnight, 19 La. Ann. 321. ....	22
Becker, Frank, <i>In re</i> , 21 Int. R. R. 243.....	9
Beckwith <i>v.</i> Benner, 6 Car. & P. 681.....	41
Beebe <i>v.</i> Hutton, 47 Barb. 187 .....	37, 41
Belger <i>v.</i> Dinsmore, 51 Barb. 69.....	64
Bennison <i>v.</i> Jewison, 12 Jur. 485.....	38
Berry <i>v.</i> Boyd, 28 Iowa, 410.....	77
Black <i>v.</i> Sixth Ave. R. R. Co., 1 Daly, 536.....	82

	PAGE.
Blackford <i>v.</i> State, 8 Heisk. (Tenn.) 538.....	11
Blake <i>v.</i> Hall, 19 La. Ann. 49 .....	65
Blake <i>v.</i> McCartney, 4 Cliff. 101.....	93
Blunt <i>v.</i> Bates, 40 Ala. 470.....	40
Bowker <i>v.</i> Goodwin, 7 Nev. 135 .....	20
Boyd <i>v.</i> Hood, 57 Pa. St. 98 .....	20, 21
Braun <i>v.</i> Chicago, 110 Ill. 186 .....	11
British India, etc., Co. <i>v.</i> Com'rs, 7 Q. B. D. 165.....	56
Brown <i>v.</i> Adv.-Gen., : Macqueen's App. 79. ....	92
Brown <i>v.</i> Crandall, 23 Iowa, 112 .....	37
Brown <i>v.</i> Thompson, 59 Me. 372.....	41
Brown <i>v.</i> Watts, 1 Taunt. 353 .....	43
Browne <i>v.</i> Bennett, 24 La. Ann. 618 .....	29
Browne <i>v.</i> Steck, 2 Col. 70 .....	37
Bruce, <i>In re</i> , 2 C. & J. 436.....	92
Brune <i>v.</i> Smith, 13 I. R. R. 54.....	93
Bumpass <i>v.</i> Faggart, 26 Ark. 398 .....	40
Burgess <i>v.</i> Salmon, 7 Otto, 381.....	15, 95
Byington <i>v.</i> Oaks, 32 Iowa, 488.....	71

## C.

Cabbott <i>v.</i> Radford, 17 Minn. 320.....	42
Caldwell <i>v.</i> Dawson, 5 Exch. 1.....	75, 78
Campbell <i>v.</i> U. S., 107 U. S. 407.....	87
Campan <i>v.</i> Lewis, 3 Wall. 106 .....	22
Cardell <i>v.</i> Bridge, 9 Allen, 487.....	66
Cardinel <i>v.</i> Smith, Deady, 197.....	21, 53, 101
Carpenter <i>v.</i> Johnson, 1 Nev. 331.....	37
Carpenter <i>v.</i> Snelling, 97 Mass. 452 .....	40, 78
Carroll <i>v.</i> Mayor, etc., Tuscaloosa, 12 Ala. 173 .....	5
Cedar Rapids, etc., R. R. Co. <i>v.</i> Stewart, 25 Iowa, 115. ....	29
Celley <i>v.</i> Gray, 37 Vt. 136 .....	20
Chadwick, <i>In re</i> , 1 Lowell, 439 .....	9
Chartiers, etc., Co. <i>v.</i> McNamara, 72 Pa. St. 278 .....	40
Chervet <i>v.</i> Jones, 6 Mad. 267....	41
City Council, <i>ex parte v.</i> Knox, 64 Ala. 463 .....	6
Clark <i>v.</i> Bailey, 12 Blatch. 156.....	8
Clark <i>v.</i> Gilbert, 5 Blatch. 330 .....	7, 9
Clapp <i>v.</i> Mason, 94 U. S. 589.....	93
Clemens <i>v.</i> Conrad, 19 Mich. 170 .....	40
Commissioners of S. F. <i>v.</i> U. S., 18 Supreme Ct. Rep'r, 361 .....	101



## TABLE OF CASES.

127

	PAGE.
<i>Com. v. Hardiman</i> , 9 Allen, 487.....	67
<i>Commonwealth v. Holbrook</i> , 10 Allen, 200.....	6
<i>Cooke v. England</i> , 27 Md. 14.....	37
<i>Coppock v. Bower</i> , 4 M. & W. 36.....	43
<i>Corbin v. Tracy</i> , 34 Conn. 325.....	37
<i>Corrie v. Billin</i> , 23 La. Ann. 250.....	37
<i>Corry Nat. B'k v. Rouss</i> , 3 Pittsb. 18.....	41
<i>Craig v. Dimock</i> , 47 Ill. 308.....	40
<i>Crocker v. Foley</i> , 13 Allen (Mass.) 376.....	21

## D.

<i>Dailey v. Coker</i> , 33 Tex. 815.....	40
<i>Davis v. Richardson</i> , 45 Miss. 499.....	40
<i>Davis v. Williams</i> , 13 East, 232.....	21
<i>Day v. Barker</i> , 36 Mo. 125.....	38
<i>DeBarre v. Livingston</i> , 48 Barb. 511.....	64
<i>Delorme v. Ferk</i> , 24 Wis. 201.....	45, 70
<i>Desmond v. Allen</i> , 10 Allen, 250.....	29
<i>Doe v. Amos</i> , 2 Man. & Ryl. 180.....	20
<i>Doe v. Weston</i> , 2 A. & E. U. S. 249.....	70
<i>Doffin v. Gieger</i> , 39 Ind. 215.....	29
<i>Dollar Sav. B'k v. U. S.</i> , 12 Wall. 227.....	8, 21, 100
<i>Dorris v. Grace</i> , 24 Ark. 326.....	37, 41
<i>Dowell v. Applegate</i> , 7 Saw. 232.....	28, 70, 72
<i>Dudley v. Wells</i> , 55 Me. 145.....	42
<i>Duffy v. Hobson</i> , 40 Cal. 240.....	40
<i>Dugan v. U. S.</i> , 3 Wheat. 172.....	46
<i>Duvall v. Eng. E. L. Ch.</i> , 53 N. Y. 500.....	98

## E.

<i>East Haven v. Derby</i> , 38 Vt. 253.....	67
<i>Emery v. Hobson</i> , 63 Me. 33.....	41
<i>Erskine v. Hohnback</i> , 14 Wall. 613.....	101
<i>Eyre v. Jacob</i> , 14 Gratt. (Va.) 422.....	91

## F.

<i>Farmersville Nat. B'k v. Greenville N. B.</i> , 84 Tex. 40.....	59, 60
<i>Ferguson v. Arthur</i> , 117 U. S. 482.....	83
<i>First Nat. B'k v. U. S.</i> , 15 Ct. of Cl. 225.....	100
<i>Fisher v. Leslie</i> , 1 Esp. Ca. 426.....	61
<i>Fleming v. Cherry</i> , 31 How. Pr. 96.....	76

	PAGE.
Folger v. U. S., 13 Ct. of Cl. 86...	54
Forbes v. Steven, L. R. 10 Eq. 178 .....	94
Foster v. Halley's Admin., 49 Ala. 593.....	29
Foster v. Ley, 2 Scott, 434.....	94
Francis v. Slack, 4 Cliff. 186.....	101
Fink v. Thompson, 4 Lans. 489.....	41

## G.

Gale & Ax v. Sauerwein, 1 Hughes, 332 ....	15
Garland v. Lane, 46 N. H. 245.....	40
Garrish v. Hyman, 29 La. Ann. 28.....	78
Goodwine v. Wands, 25 Ind. 101 .....	40
Govern v. Littlefield, 13 Allen, 127.....	41
Grace, <i>Re</i> , 75 Fed. Rep. 2 .....	83
Grace v. Collector, 48 U. S. App. 225, 79 Fed. Rep. 315 .....	83
Grand v. Cox, 24 La. Ann. 462 .....	43, 44
Green v. Holway, 101 Mass. 243.....	41
Green v. Lowry, 38 Ga. 548 ....	40
Greenleaf v. Goodrich, 101 U. S. 278.....	84
Gregory v. Fraser, 3 Camp. 454.....	43
Groesbeck v. Seeley, 13 Mich. 329 .....	70
Gunter v. Leckey, 30 Ala. 591 .....	5
Gurr v. Scudds, 11 Exch. R. 190.....	20

## H.

Hall v. Bishop, 3 Daly, 109 .....	5
Hall v. Jordan, 19 Wall. 271.....	71
Hallock v. Jaudin, 34 Cal. 167 .....	41, 42
Harding v. Harding, 7 Jur. N. S. 906 ....	94
Harper v. Clark, 17 Ohio St. 190.....	42
Harris v. Birch, 9 M. & W. 591 .....	75, 78
Hellman v. Ries, 1 Cinc. Supr. C. R. 30 .....	43
Hellman v. U. S., 15 Blatchf. 13.....	98
Hendy v. Soule, Deady, 400.....	101
Herrick v. Malin, 22 Wend. 388 .....	22
Hetzell v. Gregory, 7 Phila. 148 .....	37
Hitchcock v. Sawyer, 39 Vt. 412 .....	41
Hobson v. Neale, 8 Exch. 368 ....	94
Holman v. Johnson, 1 Cowper, 341 .....	32
Holyoke M. Co. v. Franklin P. Co., 97 Mass. 150.....	41

## TABLE OF CASES.

129

	PAGE.
Hoops <i>v.</i> Atkins, 41 Ga. 109 .....	61
Hoppock <i>v.</i> Plato, 30 How. Pr. 120 .....	37, 78
Howe <i>v.</i> Carpenter, 53 Barb. 382 .....	41
Hoyt, mdse imported by, <i>In re</i> , 75 Fed. R. 998 .....	21, 82
Hugus <i>v.</i> Strickler, 19 Iowa, 413 .....	20, 21

## I.

Israel <i>v.</i> Redding, 40 Ill. 362 .....	43
---	----

## J.

Jackson <i>v.</i> Allen, 26 How. Pr. 119 .....	20
Jackson <i>v.</i> Hough, 38 W. Va. 237 .....	10
Jacobs <i>v.</i> Cunningham, 32 Tex. 774 .....	29
Jacquín <i>v.</i> Warren, 40 Ill. 459 .....	43, 61
James <i>v.</i> Blauvelt, 26 Law Rep. 485 .....	71
James <i>v.</i> Catherwood, 3 Dowling & Ryland, 190 .....	32
Janvrin <i>v.</i> Fogg, 46 N. H. 340 ..	40
Jones <i>v.</i> Blackwell, 10 Otto, 599 .....	15
Jones <i>v.</i> Jones, 38 Cal. 584 .....	61
Justice <i>v.</i> Rowland, 10 Phila. 623 .....	5, 68

## K.

Kearns, <i>In re</i> , 64 Fed. Rep. 481 .....	112
Kershaw <i>v.</i> Cox, 3 Esp. N. P. C. 246 .....	22
Kinney <i>v.</i> Consol. Va. M. Co., 4 Sawyer, 382... ..	70
Knill <i>v.</i> Williams, 10 East, 431 .....	22
Knox, <i>In re</i> , 64 Ala. 463 .....	6
Knox <i>v.</i> Hindepoper, 21 Wis. 527 .....	37
Koch <i>v.</i> Seeberger, 30 Fed. Rep. 424....	84
Kollock, <i>In re</i> , 165 U. S. 526 .....	104, 112

## L.

Latham <i>v.</i> Smith, 45 Ill. 29 .....	39
Lauer <i>v.</i> U. S., 5 Ct. of Cl. 447 .....	101
Lehn <i>v.</i> U. S., 66 Fed. Rep. 748 .....	82
License Tax Cases, 5 Wall. 462 .....	6
Lippmann, <i>In re</i> , 3 Ben. 95 .....	8
Logan <i>v.</i> Dils, 4 W. Va. 397 .....	37
Ludlow <i>v.</i> Van Rensselaer, 1 Johns. R. 96 .....	32

## M.

PAGE.

Magown <i>v.</i> Ill. Trust & S. B'k, 18 Sup. Ct. Rep. 594.....	95
Mason <i>v.</i> Sargent, 104 U. S. 689 .....	93
Maynard <i>v.</i> Johnson, 2 Nev. 16.....	40
May <i>v.</i> Slack, 16 I. R. R. 134.....	98
McAfferty <i>v.</i> Hale, 24 Iowa, 355 .....	37, 43
McBride <i>v.</i> Doty, 23 Iowa, 122.....	44, 77
McGovern <i>v.</i> Hosbeck, 53 Pa. St. 176 .....	65
McGuire <i>v.</i> Commonwealth, 3 Wall. 387 .....	6
McLearn <i>v.</i> Skelton, 18 La. Ann. 514 .....	22
McPherson, Matter of, 104 N. Y. 306.....	95
Meador, <i>In re</i> , 1 Abb. C. C. 317.....	9
Mechanics', etc., B'k <i>v.</i> Townsend, 5 Blatch. 315.....	8
Merchandise Imported by Hoyt, <i>In re</i> , 75 Fed. R. 998.....	21, 82
Mercer <i>v.</i> Mercer, 29 Iowa, 557 .....	21, 40, 70
Merriam, Matter of, 141 N. Y. 484.....	91
Miller <i>v.</i> Larmon, 38 How. Pr. 417.....	67
Miller <i>v.</i> Wentworth, 82 Pa. St. 280.....	38
Miner <i>v.</i> Fredonia, 27 N. Y. 155 ..	6
Mobile, etc., R. Co. <i>v.</i> Edwards, 46 Ala. 267 .....	37
Mogelin <i>v.</i> Westhoff, 33 Tex. 788 .....	22
Morgan <i>v.</i> Graham, 35 Iowa, 213 .....	41
Morley <i>v.</i> Hall, 2 Dowl. 494 .....	20
Moore <i>v.</i> Quirk, 105 Mass. 49 .....	40
Moore <i>v.</i> Moore, 47 N. Y. 467 .....	38, 39, 71
Morris <i>v.</i> McMorris, 44 Miss. 441 .....	40, 41
Myers <i>v.</i> McGraw, 5 W. Va. 30. ....	38
Myers <i>v.</i> Smith, 48 Barb. 614 .....	28, 36, 54

## N.

Nave <i>v.</i> King, 27 Ind. 356....	46
New Haven, etc., Co. <i>v.</i> Quintard, 31 How. Pr. 29.....	20, 42
New Orleans <i>v.</i> Metro. Loan Bank, 31 La. Ann. 310 .....	8, 10
Northrup <i>v.</i> Shook, 10 Blatch. 243 .....	9

## O.

Oregon, etc., Trust Co. <i>v.</i> Rathbun, 5 Sawyer, 32 .....	8
Orford <i>v.</i> Cole, 2 Starkie, 351 .....	21
Oulton <i>v.</i> Sav. Inst., 17 Wall. 118 .....	8, 59
Owen <i>v.</i> Thomas, 3 Mylne & K. 353 .....	38, 41
Owsley <i>v.</i> Greenwood, 8 Minn. 429 .....	42
Oxford Iron Co. <i>v.</i> Spradley, 51 Ala. 171.....	41

## TABLE OF CASES.

131

## P.

PAGE.

Page <i>v.</i> Rives, 1 Hughes, 297 .....	93
Pargond <i>v.</i> Richardson, 26 La. Ann. 617 .....	78
Patterson <i>v.</i> Eames, 54 Me. 203 .....	37
Patterson <i>v.</i> Gile, 1 Cal. 7, 200 .....	29, 40
Peo. ex rel. Barbour <i>v.</i> Gates, 43 N. Y. 40 .....	40
Peoria Ins. Co. <i>v.</i> Perkins, 16 Mich. 380 .....	37
Perryman <i>v.</i> Greenville, 51 Ala. 507 .....	41
Pervear <i>v.</i> Commonwealth, 5 Wall. 475 .....	6
Petrie <i>v.</i> Lamont, 1 C. & M. 93 .....	76
Plessinger <i>v.</i> Dupuy, 25 Ind. 419....	38, 40
Plumley <i>v.</i> Mass., 155 U. S. 461 .....	6
Pollock <i>v.</i> Farmers' L. & T. Co., 158 U. S. 601 .....	95
Pope <i>v.</i> Burns, 4 Int. R. R. 133.....	59, 61
Portland <i>v.</i> O'Neill, 1 Oreg. 218 .....	5
Prather <i>v.</i> Tulauf, 38 Ind. 155.....	42
Prather <i>v.</i> Pritchard, 26 Ind. 65 .....	66
Pullen <i>v.</i> Com'rs of Wake Co., 66 N. C. 361.....	91

## Q.

Quinn <i>v.</i> Lloyd, 1 Sweeny, 253 .....	42
--	----

## R.

Railroad Co. <i>v.</i> National B'k, 102 U. S. 14 .....	62
Ramson <i>v.</i> U. S., 8 Reporter, 164.....	93
Reed <i>v.</i> Deere, 7 Barn. & C. 261.....	22
Rees <i>v.</i> Jackson, 64 Pa. St. 486 .....	29
Rex <i>v.</i> Hawkeswood, 2 East P. C. 955 .....	43
Rex <i>v.</i> Preston, 3 N. & M. 31 .....	31
Rheinstrom <i>v.</i> Cone, 26 Wis. 163.....	41
Richmond <i>v.</i> Blake, 132 U. S. 592 .....	7
Rice <i>v.</i> Hellman, 20 Ohio St. 180 .....	43
Ricord <i>v.</i> Jones, 33 Iowa, 26.....	42
Rippiner <i>v.</i> Wright, 2 B. & Ald. 479.....	43
Roback <i>v.</i> Taylor, 2 Bond. 36 .....	101
Robinson <i>v.</i> Law, 31 Iowa, 9 .....	31

## S.

Salmon <i>v.</i> Burgess, 1 Hughes, 356 .....	15
Sayles <i>v.</i> Davis, 22 Wis. 225 .....	45, 70
Schemerhorn <i>v.</i> Burgess, 55 Barb. 422 .....	36

	PAGE.
Schmeidler <i>v.</i> Barney, 113 U. S. 645 .....	84
Scholey <i>v.</i> Rew, 23 Wall. 331 .....	95
Schoolfield's Ex'r <i>v.</i> City of Lynchburg, 78 Va. 366 .....	91
Schmidt <i>v.</i> Trowbridge, 3 Cin. Law Bul. 1029 .....	85
Schulze-Berge <i>v.</i> U. S., 66 Fed. Rep. 748.....	82
Selden <i>v.</i> Equitable Trust Co., 94 U. S. 419 .....	8
Sime <i>v.</i> Howard, 4 Nev. 473.....	69
Simmons <i>v.</i> State, 12 Mo. 268 .....	5
Slack <i>v.</i> Tucker <i>v.</i> Co., 23 Wall. 321 . . . . .	11
Smith <i>v.</i> Waters, 25 Ind. 397 .....	21
Smythe <i>v.</i> Fisk, 23 Wall. 374 .....	20
Sohier <i>v.</i> Eldredge, 103 Mass. 345 .....	93
Sperry <i>v.</i> Horr, 32 Iowa, 184 .....	31
Spielman <i>v.</i> State, 27 Md. 520 .....	7
Spooner <i>v.</i> Eifler, 1 Heisk. (Tenn.) 633.....	40
State <i>v.</i> Dalrymple, 70 Md. 294 .....	91
State <i>v.</i> Delano, 54 Me. 501 .....	6
State <i>v.</i> Duncan, 16 Lea, 75 .....	10
State <i>v.</i> Field, 49 Mo. 270 .....	11
State <i>v.</i> Garton, 32 Ind. 1 .....	46, 65
State <i>v.</i> Hile, 30 Wis. 416 .....	41
State <i>v.</i> Johnson, 65 Me. 362.....	5
State <i>v.</i> Palt, 67 Mo. 488 .....	12
Stanwood <i>v.</i> Green, 2 Abb. (U. S.) 184 .....	8
Steele <i>v.</i> Spencer, 1 Peters, 552 ...	22
St. Louis <i>v.</i> Laughlin, 49 Mo. 559 ....	5
Stockwell <i>v.</i> Doswell, 16 Wall. 156.....	11
Strode <i>v.</i> Commonwealth, 52 Pa. St. 181 .....	91
Strouse, <i>In re</i> , 1 Sawy. 605 .....	8
Sturges <i>v.</i> U. S., 117 U. S. 363.....	93
Swift, Matter of Estate of, 137 N. Y. 77 . . . . .	91

## T.

Taylor <i>v.</i> Duncan, 33 Tex. 440 .....	29
Taylor <i>v.</i> U. S., 3 How. 197 ...	20
Teagarden <i>v.</i> Garver, 24 Ind. 399.....	29
Thomson <i>v.</i> Adv.-Gen., 12 Cl. & F. (Ho. of L.) 1 .....	92
Thompson <i>v.</i> Browne, 3 Mylne & K. 32.....	92
Timp <i>v.</i> Docham, 29 Wis. 440 .....	41
Tobey <i>v.</i> Chipman, 13 Allen (Mass.) 123.....	37, 40
Toledo, etc., R. R. <i>v.</i> Nordyke, 27 Ind. 95.....	67

	PAGE.
Treat <i>v.</i> Staples, 1 Holmes, 1....	100, 101
Tripp <i>v.</i> Bishop, 56 Pa. St. 424 .....	40
Trull <i>v.</i> Moulton, 12 Allen (Mass.) 396 .....	42
Tucker <i>v.</i> Siack, 1 Holmes, 485 .....	11
Turner <i>v.</i> Martin, 3 Jur. N. S. 397 .....	94
Tyson <i>v.</i> State, 28 Md. 577.....	91

## U.

Union, etc., Asso. <i>v.</i> Neill, 31 Iowa, 95 .....	28
U. S. <i>v.</i> Abbott, 9 Int. R. R. 186 .....	48
U. S. <i>v.</i> A Distillery, 22 Int. R. R. 195.....	9
U. S. <i>v.</i> Allen, 9 Ben. 154 .....	98
U. S. <i>v.</i> Bank, 2 How. 711 .....	46
U. S. <i>v.</i> Bank, 15 Peters, 392 .....	46
U. S. <i>v.</i> Banks, 17 Fed. Rep. 322.....	93
U. S. <i>v.</i> Barker, 12 Wheat. 559 .....	46
U. S. <i>v.</i> Brice, 8 Fed. Rep. 381 .....	93
U. S. <i>v.</i> Brown, Deady, 566 .....	29, 82
U. S. <i>v.</i> Buttsfield, 7 Ben. 412 .....	54
U. S. <i>v.</i> Cheesman, 21 Int. R. R. 340 ...	54
U. S. <i>v.</i> Clare, 2 Fed. R. 55 .....	6
U. S. <i>v.</i> Cutting, 3 Wall. 441 .....	9
U. S. <i>v.</i> Davis, 37 Fed. Rep. 468.....	7
U. S. <i>v.</i> Distillery, 6 Biss. 483 ...	9
U. S. <i>v.</i> Eisner & M. Co., 59 Fed. R. 352 .....	83
U. S. <i>v.</i> Fielding, 17 Fed. R. 572.....	54
U. S. <i>v.</i> Fisk, 3 Wall. 445.....	7, 9
U. S. <i>v.</i> Fox, Deady, 579 .....	83
U. S. <i>v.</i> Glab, '99 U. S. 225.....	7
U. S. <i>v.</i> Goldback, 102 U. S. 623 .....	30, 33, 82
U. S. <i>v.</i> Gooding, 12 Wheat. 460.....	20
U. S. <i>v.</i> Griswold, 7 Sawyer, 311.....	71
U. S. <i>v.</i> Hart, 4 Fed. Rep. 292 .....	93
U. S. <i>v.</i> Hazard, 8 Fed. Rep. 380 .....	93
U. S. <i>v.</i> Hodson, 10 Wall. 395 .....	20
U. S. <i>v.</i> Howard, 1 Saw. 507... ..	12
U. S. <i>v.</i> Hunnewell, 13 Fed. Rep. 617 .....	92, 94
U. S. <i>v.</i> Imsand, 1 Woods, 581 .....	106
U. S. <i>v.</i> Isham, 17 Wall. 496 .....	59
U. S. <i>v.</i> Kaufman, 6 Otto, 567 .....	100
U. S. <i>v.</i> Kelly, 28 Fed. Rep. 845 .....	93

	PAGE.
U. S. <i>v.</i> Kenton, 2 Bond, 97 .....	11
U. S. <i>v.</i> Learned, 1 Abb. U. S. 483.....	61
U. S. <i>v.</i> Leverich, 9 Fed. Rep. 586 .....	92
U. S. <i>v.</i> Mann, 95 U. S. 580 .....	9, 59, 100
U. S. <i>v.</i> Mason, 6 Biss. 350.....	9
U. S. <i>v.</i> Merck, 66 Fed. Rep. 251.....	82
U. S. <i>v.</i> Moore, 11 Fed. R. 248 .....	48
U. S. <i>v.</i> Morris, 27 Fed. Rep. 341 .....	92
U. S. <i>v.</i> N. Y., L. I. & T. Co., 9 Ben. 413.....	93
U. S. <i>v.</i> Olney, 1 Abb. 275.....	20
U. S. <i>v.</i> One Case, 6 Ben. 493 .....	85
U. S. <i>v.</i> Rankin, 8 Fed. Rep. 872 .....	92
U. S. <i>v.</i> Rennecke, 28 Fed. Rep. 847 .....	18
U. S. <i>v.</i> Rhawn, 11 Phila. 521 .....	59
U. S. <i>v.</i> Riley, 5 Blatch. 204.....	6
U. S. <i>v.</i> Rindskopf, 15 Otto, 418 .....	100
U. S. <i>v.</i> Shea, 5 Blatch. 546 .....	6
U. S. <i>v.</i> Simons, 1 Abb. 470 .....	11
U. S. <i>v.</i> Smith, 1 Saw. 192.....	10
U. S. <i>v.</i> Tappan, 10 Ben. 284.....	99
U. S. <i>v.</i> 35 Bbls., etc., 2 Biss. 88.....	6
U. S. <i>v.</i> 3 Tons of Coal, 6 Biss. 379 .....	9
U. S. <i>v.</i> Townsend, 8 Fed. Rep. 306 .....	98
U. S. <i>v.</i> Truck, 28 Fed. Rep. 846 .....	99
U. S. <i>v.</i> 237 Boxes, 6 Ben. 543 .....	51, 87
U. S. <i>v.</i> Van Slyke, 8 Biss. 227 .....	12
U. S. <i>v.</i> Vinson, 8 Fed. Rep. 507.....	18
U. S. <i>v.</i> Walsh, 1 Abb. U. S. 66 ..	48
U. S. <i>v.</i> Washington, 2 Cliff. 601.....	100
U. S. <i>v.</i> Watts, 1 Bond, 580 .....	94
U. S. <i>v.</i> Wilson, 69 Fed. Rep. 144 .....	83
U. S. <i>v.</i> Wong Kim Ark, 18 Supreme Ct. Rep. 456.....	99

## V.

Vail <i>v.</i> Knapp, 49 Barb. 299.....	20, 44, 77
Vaughn <i>v.</i> O'Brien, 39 How. Pr. 515 .....	40, 41
Vorebeck <i>v.</i> Roe, 50 Bar. 302 .....	41

## W.

Wallace <i>v.</i> Craven, 34 Ind. 534 .....	40
Waring <i>v.</i> Smythe, 2 Barb. Ch. 119 .....	22



## TABLE OF CASES.

135

	PAGE.
Warren <i>v.</i> Shook, 91 U. S. 704 .....	7, 10
Warrington <i>v.</i> Sarbor, 8 East, 242.....	20
Waterbury <i>v.</i> McMillan, 46 Miss. 635 .....	40
Weltner <i>v.</i> Riggs, 3 W. Va. 445 .....	41
Westfall <i>v.</i> Shook, 5 Blatch. 383.....	2
Weyman <i>v.</i> Torreyson, 4 Nev. 124 .....	40, 43
Whitehill <i>v.</i> Shickle, 43 Mo. 537 .....	41
Wigham <i>v.</i> Pickett, 43 Ala. 140 .....	37
Willey <i>v.</i> Robinson, 13 Allen (Mass.) 128.....	21
Wilson <i>v.</i> Carey, 40 Vt. 179 .....	43
Wilson <i>v.</i> Kennedy, 1 Esp. 245 .....	43
Wilson <i>v.</i> Martin, 1 Denio, 602 .....	76
Wilkinson <i>v.</i> Greeley, 1 Curtis, 439 .....	85
Wilhelm <i>v.</i> Wade, 65 Mo. 39.....	93
Wiltse <i>v.</i> State, 8 Heisk. (Tenn.) 544.....	11
Woodward <i>v.</i> Stearns, 10 Abb. Pr. N. S. 395.....	5, 68
Works <i>v.</i> Hershey, 35 Iowa, 340.....	41
Wright <i>v.</i> Blakeslee, 101 U. S. 174 .....	99, 101



# INDEX.

---

## A.

	PAGE.
A, Schedule .....	55
Accident, insurance.....	74
stamps lost or destroyed by .....	54
stamp omitted by.....	35-37
Account, bond to.....	65
of executor, etc., tax receipt in.....	96
Accumulation, cert. of interest in.....	66
Acknowledgment.....	67
Act, date of taking effect.....	114
Actual consideration, tax on.....	71
Ad valorem duties on deed, etc.....	69
Adjudications on tariff, value of.....	83
Administrator to make return for legacy tax .....	95
to pay legacy tax.....	88, 95
Admission in evidence, stamp necessary.....	39
in writing of balance due not a note.....	61
Adulterated flour, see mixed flour .....	103
Affixing stamp.....	39
Agent, insurance .....	75
Agreement may be enforced though instrument unstamped....	43
of sale or to sell products.....	57
requiring stamp proved by parole, when. ....	43
relating to a vessel.....	67
to sell stock.....	55
Alien, tax on citizen's interest in estate of.....	92
Allowance of drawback on exports.....	86
Ancestor, tax on legacy to.....	89
Annual receipts of oil and sugar refiners taxed.....	87
Anodynes, tax on.....	80
Antipyrine.....	82
Appeal by taxpayer for refund.....	101

	PAGE.
Applications, dermatological.....	83
Aromatic cachous, tax on.....	83
Articles for consumption (Schedule B).....	80
Assessment of tax not definitely fixed.....	100
of tax on flour sold unstamped.....	109
Assignment of insurance policy, when a mortgage.....	75, 77, 78
of mortgage.....	77, 78
of stock certificate.....	55
Attestation of deed.....	72
Attorney, power of.....	79
Aunt, tax on legacy to.....	89

## B.

Bagatelle tables.....	12
Bank check, tax on.....	58
Bank notes exempted.....	60
Banks, cancellation of check stamps by.....	54
Banker, also broker, one special tax.....	3
definition of.....	2
tax on.....	2, 7
Banking, what is not.....	8
Baptismal certificate.....	66
Barrels, size of, for mixed flour. ....	108
Bay rum.....	84
Beer, tax on.....	1
Beneficiary society or order.....	73
Bequest, tax on.....	88
Berth, sleeping car, tax on.....	88
Bibliography.....	115
Bill of exchange (foreign), acceptance of.....	31
of exchange (foreign) tax on.....	61
of exchange (inland) tax on.....	60
of exchange, protest of.....	79
of exchange of U. S. government.....	46
Bills and notes, omitting stamp from.....	30
in sets.....	62
Bill of lading, domestic or inland.....	63
of lading, penalty for not issuing.....	63
of lading, export.....	63
Billiard room, definition of.....	5
tax on.....	5

	PAGE.
Birth certificate.....	66
Bitters, tax on.....	80
Blended flour.....	103
Board of Trade, sale of products on.....	57
Boarding house.....	76
<i>Bona fide</i> holder of unstamped note.....	31
Bond, goods in.....	2
and mortgage, dealing in, not banking .....	8
and mortgage, stamp tax on .....	65, 78
of manufacturer for export.....	51
of indemnity.....	65
surety.....	65
sheriff's official .....	65
fidelity, by surety company.....	74
indemnity, by surety company.....	74
of administrator, executor, etc.....	65
of assignee in bankruptcy.....	65
of insolvent.....	65
of treasurer of society.....	65
Bonds, stamp on.....	19
corporate, taxed .....	55
government to borrow on .....	102
guarantee of, by surety company.....	74
foreign, same tax as domestic .....	39
post-stamping of.....	34, 36
Bonded warehouse for export.....	51
Books, examination of, by revenue officers.....	8
transfer of stock on corporate .....	55
Borrow, Secretary of Treasury may.....	101
Bottled wine.....	85
Bowling alley, tax on.....	5
Branding of mixed flour .....	105
Brands and marks, Commissioner's power as to.....	112
British Acts.....	iii
Acts, effect under, of failure to stamp.....	24-31
Acts, exemptions under.....	22
Acts, broker's contract note under.....	68
Acts, deed duties under.....	69
Acts, death duties under.....	91, 93
Acts, supplying omitted stamps under.....	41
Acts, unstamped papers in evidence under.....	43

British Acts — continued.	PAGE.
decisions, value of .....	93
North America, manifests, etc., to, exempt.....	80
Broker, definition of.....	3, 7, 8, 9, 10
also banker, one tax .....	3
when a banker.....	7, 9
commercial .....	3, 10
custom-house.....	3, 12
unlicensed, when may sue.....	5
stock, penalty for failing to stamp memo.....	56
produce, penalty for failing to stamp memo.....	57
recovery of commissions by unlicensed.....	68
Brokers, special tax on.....	3, 9
who are and who are not.....	9, 11
not specified, not taxed.....	11
Broker's note.....	68
Brother, tax on legacy to.....	89
Building and loan, stock, certain, exempt.....	45
Bullion, coinage of silver.....	103
broker .....	3
Burden of proof on government.....	20
of proof on intent to evade tax.....	42
of proof for alteration of stamped instrument.....	22
Bureau of Engraving and Printing.....	53
Burial Certificates.....	66
Business, special tax on .....	2, 6
carrying on .....	18
tax, see Occupation Tax.	
see Special Tax.	
Buyer of produce to receive memo.....	57
Buyer of stock to receive memo.....	55

## C.

Cancel, failure to, overlooked.....	40
failure to, on deed, not invalidate.....	72
innocent of failure to. ....	29
stamp, neglect to, effect on evidence.....	29
stamp, request to, will not invalidate note.....	28
stamps, who should .....	28, 54
Cancellation of stamps, method of.....	27, 29, 53
means defacement.....	29
by banks and telegraph companies.....	54

	PAGE.
Cancellation of stamps on imported goods . . . . .	52
mechanical contrivances for . . . . .	30
Capital . . . . .	2, 8
amount of, employed . . . . .	8
Car, tax on parlor and sleeping tickets . . . . .	88
Carbonated waters . . . . .	80
Card to be placed in mixed flour packages . . . . .	105
Cargo, clearance of . . . . .	76
Carrier to issue receipt or bill . . . . .	63
Carrying on business . . . . .	18
Cashier's check . . . . .	59
Casualty insurance . . . . .	74
Cattle broker . . . . .	11
Caution label on mixed flour . . . . .	106
Certificate of damage . . . . .	66
of deposit with interest . . . . .	60
of deposit without interest . . . . .	38, 59
of interests or of profits . . . . .	66
of justice of peace . . . . .	67
of stock assigned in blank . . . . .	55
of stock (foreign) to pay tax . . . . .	39
Certificates, all not enumerated . . . . .	66
of indebtedness, taxed . . . . .	19, 55
of indebtedness, post-stamping . . . . .	34, 36
of indebtedness, U. S. for loans . . . . .	101
of stock, stamps on . . . . .	19
of stock, post-stamping . . . . .	34, 36
marine . . . . .	66
Certification of stamped check . . . . .	59
Certified copy may be post-stamped . . . . .	35
Change in stamped instrument . . . . .	22
Charter-party . . . . .	67
Chattel mortgage needs no stamp . . . . .	44
mortgage, stamp on . . . . .	77, 118
Checks bank, tax on . . . . .	58
paid, revenue officer may inspect . . . . .	9 59
certification of . . . . .	49
post-dated are promissory notes . . . . .	59
Cheese, filled, legislation as to . . . . .	104
Chewing gum . . . . .	85
Cigars, tax on . . . . .	12

	PAGE.
Cigars, return of, on hand.....	14
former rates .....	15
see also Tobacco.....	
Cigarettes, tax on.....	12
Circuses, definition of.....	4
tax on, .....	4, 12
Citizenship as affecting legacy tax .....	92
Civil suit, to collect taxes.....	100
for refund of tax paid .....	101
Claim for drawback.....	87
Claims, collections of, from United States.....	79
Classification of internal revenue taxes.....	99
Clearance for foreign port.....	76
Cocaine .....	82
Coinage of silver bullion .....	103
Collateral inheritance tax .....	88
fact may be proved by unstamped paper.....	43
Collection of legacy tax .....	95
Collector to post-stamp, when... ..	34, 37
may remit penalty.....	35
liable in tort for wrongful seizure .....	101
Commercial broker, tax on.....	3, 10
definition .....	3
Commercial paper in Federal Courts.....	62
Commission on sale of stamps.....	54
recovery of by broker.....	68
Commission merchants .....	11
Commissioner of Internal Revenue, rulings by.....	21, 118
Compliance label on mixed flour.....	106
Compositions, medicinal, taxed.....	47, 58
Compromise of will contest not taxable.....	93
Compound medicines.....	47
Concert halls, tax on.....	5
Conflict between Federal and State taxes.....	6
Congress, power of, to enact revenue laws.....	20
and State Courts.....	38, 39
Consanguinity, degrees affected by legacy tax.....	90
Consent cannot cure defect.....	38
Consideration in deed .....	69
actual, basis of tax.....	71
in mortgage.....	71



	PAGE.
Consideration of love and affection.....	70
Consignor to obtain receipt.....	63
Constable, return by, of service.....	67
Constitutionality of Special Tax.....	6
of Legacy Tax.....	91, 95
Construction of revenue acts.....	20, 21
Contract, broker's note.....	68
note under English act.....	68
relating to vessel.....	67
enforceable though writing unstamped.....	43
not invalid because instrument is void....	43
requiring stamp proved by parol, when.....	43
informal.....	20
in two instruments, one stamp.....	20
Conveyance.....	69
in trust, as security, is mortgage.....	77
Conviction, second.....	107
Co-operative fire insurance companies.....	73
local associations.....	73
building and loan associations.....	45
Copy may be stamped instead of original.....	38
not evidence till stamped.....	39
not to be recorded till stamped.....	39
of recorded instrument, use of in evidence.....	43
of recorded mortgage, presumption regarding.....	44
of record, certificate to.....	67
certified may be post-stamped.....	35
Corporate securities tax.....	55
Corporation, securities of public exempt.....	45
tax on legacy to.....	90
Correction in a stamped instrument.....	22
of omission to stamp.....	24, 31
of unstamped papers, etc.....	34
in court.....	37
Cordials, tax on.....	80
Cosmetics, tax on.....	47, 83
Counterfeiting.....	24, 28, 102
Court, correction in.....	37
County commissioners, order by, exempt.....	46
securities exempt.....	45
Cousins, tax on legacy to.....	89

	PAGE.
Credit, letter of .....	61
sale of proprietary stamps on.....	30, 33
insurance.....	74
Crime.....	28
Criminal proceeding, unstamped paper in .....	43
suit for tax evasion .....	100
Cure of omission.....	24, 31
of unstamped papers, etc.....	34
cannot be effected by consent.....	38
of defect of stamps on mortgage .....	77
of defects .....	38
Custom-house, broker, definition .....	3
tax on.....	12
entry.....	72
manifest .....	76

## D.

Damage, certificate of.....	66
Date in cancellation.....	27
of instrument.....	21
when legacy takes effect, .....	95
when mixed flour takes effect.....	112
when tax on articles takes effect, Schedule B.....	55
when tax on articles takes effect, Schedule A.....	52
Dealer, when deemed manufacturer .....	52, 53
Dealers in tobacco, who are.....	18
in tobacco, farmers are not.....	17
and manufacturers, tobacco, special tax on.....	16, 17
goods in hand, July 1, 1898, taxed.....	85
Dealing with maker or packer of mixed flour who has paid tax..	110
Death duties .....	88
Debenture, definition of.....	56
foreign, same tax as domestic.....	39
Debentures, stamps on.....	19
taxed .....	55
post-stamping .....	34, 36
Debt, forgiven by will is a legacy.....	94
Debts, bequests to pay is a legacy.....	94
Decisions by Department.....	21, 118
Declaration of manufacturers under oath .....	51
of trust in land not a conveyance.....	69

	PAGE.
Deed, confirmatory, needs no stamp.....	70
actual consideration.....	71
tax on.....	69
excluded because not duly stamped.....	71
unstamped, valid when.....	38
partition, when to be stamped...	69
prior insufficiently stamped.....	70
tax — needs no stamp.....	45, 70
Defacement necessary for cancellation.....	29
Defect of stamps, how corrected.....	34
of stamps on mortgage, cure of.....	77
Defects, curing.....	38
Deficient stamp.....	39
Deficient stamping, cure of.....	34, 36
Definitions, banker.....	2, 7, 8
billiard room.....	5
bowling alley.....	5
broker.....	3, 9, 10
capital.....	2
“carrying on business”.....	18
certificate of deposit not drawing interest.....	59
circus.....	4
commercial broker.....	3
custom-house broker.....	3
dealer in tobacco.....	16
debenture.....	56
pawnbroker.....	3
proprietor.....	12
theater.....	4
Deliveries of products taxed.....	57
of stocks taxed.....	55
Demand, draft or order on, or sight.....	58
Demurrer on omission of stamp.....	42
Dentifrice.....	83
Department, Internal Revenue.....	iv, 16
rulings.....	118
rulings, weight of.....	21
Deposit, certificate of, interest.....	60
certificate of, without interest.....	58
Deposition, certificate to.....	66
Destroyed stamps.....	54

	PAGE,
Destruction of empty flour package.....	III
of unstamped paper.....	43
Discussion of Internal Revenue taxes.....	99
of misdemeanors and penalties....	23, 107
Discount to brewers.....	I
on sale of stamps.....	54
Dispatch, telegraphic.....	46, 72
Distrain, government may, for tax.....	100
Distribution of stamps.....	32, 53
Distributive shares, tax on.....	88
Document, stamps on.....,.....	19
registry, etc., of, without stamp.....	33
not evidence till stamped.....	39
not recorded till stamped.....	39
Documentary stamp, kind of, not essential.....	44
Domestic bill of exchange.....	60
dealer, when deemed manufacturer.....	52, 53
money orders.....	60
Domicile, how affects legacy tax.....	92
Draft, demand on sight.....	58
time.....	60
omitting stamp from... ..	30
post-stamped is a promissory note.....	61
Drawback.....	86
Drops, medical, tax on.....	80
Drugs, etc... ..	47, 80, 82
Due-bill, when a note.....	61
Duplicate leases.....	76
stamps.....	54
Duty, imposts, to be paid on certain articles.....	52
Duties on legacies, etc.....	88

## E.

Effect, act takes effect when.....	15, 114
of omission on instrument.....	24
of neglect to cancel stamp.....	28, 29
unstamped instrument of no.....	34
Elaterium.....	82
Employer's liability insurance.....	74
Employees' relief associations.....	73
Empty flour package to be destroyed.....	III

	PAGE.
Endorsement of note requires no stamp.....	61
Enforcement of the act.....	54
of penalties.....	111
Engraver of stamps, fraud by.....	28
Engraving and printing stamps.....	53
Enjoin, citizen cannot, the collection of tax.....	101
English stamp duties.....	iii
Entry, custom-house, for consumption.....	72
custom-house, for withdrawal..	72
Error in stamping, how corrected.....	35
Estates exceeding \$10,000 subject to legacy tax.....	88
Estate duties in England.....	93
Evasion of legacy tax.....	94
Evidence, papers prior to July 1, 1898.....	24
effect on, of failure to cancel stamp.....	29
record of unstamped instrument not.....	44
instrument not, until stamped.....	39
unstamped instrument incompetent .....	23
unstamped instrument, admissible in.....	37
unstamped paper may be, of collateral fact.....	43
post-stamped instrument in .....	37
paper may be stamped in court.....	40, 41
rules of, in states, as affected by acts of Congress ...	39
Federal acts only affect Federal courts.....	40
fraudulent intent must be shown .....	41
Examination of books, premises, etc., by officials .....	100
of books, etc., by revenue officers .....	8, 9
Excess of annual receipts, oil and sugar, tax on.....	87
Exchange, bill of, inland.....	60
bill of, foreign .....	61
foreign bills of.....	31
broker's note of sale of.....	68
sale of products on .....	57
Excise tax on petroleum and sugar.....	87
Executor to make return for legacy tax.....	95
to pay legacy tax .....	88, 95
Exemptions, under English statute .....	22
Exempt, agricultural products.....	80
building and loan stock, certain.....	45
certain forms of insurance.....	73
doctor's prescription .....	47

	PAGE.
Exempt, natural spring waters.....	80
order by county commissioners.....	46
government and local securities.....	45
government documents, etc.....	46
securities of United States, of State, etc.....	45
sheriff's official bond.....	46
tax deed.....	45, 70
telegrams on company business.....	46
telegrams on government business.....	46
Exhibition, tax on..	4, 12
Existing laws made applicable.....	99
Export, drawback on.....	86, 87
bill of lading.....	63
Exportation of mixed flour.....	110
free from stamp tax.....	50, 51
Express company to issue receipt.....	63
money order.....	61

## F.

Factors.....	11
False declaration of manufacturer.....	52
marks, penalty for on mixed flour.....	106
Failure to stamp documents.....	22
to stamp, effect on instrument.....	24
to stamp, not invalidate unless intentional.....	41
innocent, to cancel.....	29
to pay special tax, penalty for.....	17
Farmers not dealers in tobacco.....	17
coöperative associations.....	73
Father, tax on legacy to.....	89
Federal tax laws, effect of, on State rules of evidence.....	39
courts and commercial paper.....	62
Fidelity insurance.....	74
Filled-cheese legislation.....	104
Fines, enforcement of.....	111
Fire insurance.....	73
Flour, mixed ..	103
mixed, special tax on makers and packers.....	104
mixed, marking or branding packages.....	105
mixed, packages to be marked.....	105
mixed, labels and notices on packages.....	106, 108

	PAGE.
Flour, mixed, imported .....	109
Food products .....	103, 104
Foreign articles pay import and stamp duty.....	52
bills of exchange.....	31, 61
bill of lading.....	63
bonds, stock, etc., same tax as domestic.....	39
securities, tax on sale and transfer of.....	39
port, passage ticket for.....	78
will, legacy tax under.....	92
Foreman of manufacturer may make statement.....	51
Forfeiture of unstamped article .....	50
enforcement of..	111
for neglect to make manufacturer's statement.....	51
Forging.....	24
Forgiveness of a bond debt by will.....	94
Fraternal insurance.....	73
Fraud against government.....	24
Fraudulent acts .....	24
claim for drawback.....	87
intent not presumed.....	41, 42
omission must be, to invalidate instrument .....	41
Free samples, taxable.....	82
Freight.....	63
broker .....	3

## G.

Gardener, market.....	11
Government, powers of, as to revenue tax.....	100
power of a attorney to collect claim from.....	79
securities, purchase and sale of.....	7
securities, exempt.....	45
lease by. ....	76
messages exempt.....	46
money orders.....	60
Grain receipts.....	80
Grandparent, uncle, etc., tax on legacy to.....	88
Gross receipts, precedents for tax on.....	88
receipts, return of by certain persons....	87
receipts, what are.....	88
Guarantee bonds by surety company.....	74
of land titles, etc.....	74

	PAGE.
Guarantee insurance.....	74
Gum, and substitutes for chewing.....	85

## H.

Hair dressing, dye, restorative, oil.....	83
Heirs, see Legacy tax.....	88
History of Stamp Taxes.....	iii
Hotel.....	76
Husband exempt from legacy tax... ..	90

## I.

Ignorant omission may be supplied.....	40
Illegal use of proprietary stamps.....	48
Imitation wine....	85
Imported articles to be stamped for revenue.....	52
Import duty on tea.....	113
Importation of mixed flour.....	110
Imprisonment for second offense.....	112
Inadvertent omission of stamp.....	35
Income, charging legacy tax to.....	92
Incompetent evidence, unstamped instrument.....	23
Increase of retail price by amount of tax.,.....	82
of tax on beer.....	1
in tobacco tax.....	12
Indebtedness, certificate of, taxed,.....	55
U. S. certificates of.....	101
Indemnity, bond of.....	65
bonds by surety companies.....	74
bonds by individuals.....	75
Indictment, sufficiency of, for selling without stamp.....	48
Indiscriminate use of documentary stamps.....	44
use of stamps in respective schedules.....	47
Indorsement of note requires no stamp.....	61
Inheritance tax..	88
taxes in various states.....	91
Initials in cancellation.....	27
Inland bills of exchange.....	60
insurance.....	73
Innocent omission to cancel stamp.....	29
Inspection or paid checks .....	9, 59



	PAGE.
Instruments, stamps on.....	19
written, subject of tax.....	20
what affected by the act,.....	22
unstamped, incompetent evidence. ....	23
omission of stamp on, effect.....	24
unstamped, invalid.....	34
to be stamped before registration, etc.....	33
not evidence until stamped.....	39
not to be recorded till stamped.. ....	39
record of unstamped, not evidence.....	44
altered, requires new stamp.....	22
not invalid unless omission intentional.....	41
Insufficient stamps on deed.....	70, 71
Insufficiently stamped mortgage, void .....	78
Insurance accident .....	74
agents .....	75
burglary .....	74
casualty .....	74
elevator.....	74
employer's liability .....	74
fidelity .....	74
fire.....	73
guarantee .....	74
industrial life.....	73
inland .....	73
life .....	72
marine.....	73, 75
plate-glass.....	74
steam boiler.....	74
Intent.....	31
to evade stamp duties. ....	49
must be fraudulent to invalidate instrument.....	41
fraudulent, not presumed .. ....	41, 42
Interest, beneficial, in estate, taxed... ..	88
certificate of incorporate property.....	66
Internal Revenue in United States.....	iv
taxes, discussion of.....	99
International ferries .....	78
Interpretation of stamp acts.....	20, 21
Intervening rights not affected.....	36
Intestate estate subject to tax.....	88

	PAGE.
Invalid. ....	34
contract not, because instrument void. ....	43
instrument not, unless omission intentional. ....	41
paper not for want of particular stamp. ....	44
unstamped instruments. ....	24
Invalidate. ....	31, 41
neglect to cancel stamp will not, note. ....	28
Invalidity of instrument, how avoided. ....	34
for lack of stamp, a defense for maker. ....	40
I. O. U. requires no stamp. ....	61

## J.

Joint and several agreement, one stamp. ....	21
Judgment on unstamped note good. ....	22

## K.

Kin, next of, see Legacy Tax. ....	88
Kind of documentary stamp not essential. ....	44

## L.

Label, original on mixed flour. ....	106
on repacked mixed flour. ....	108
Lack of stamps, inducing leniency. ....	42
Law, existing provisions to apply. ....	15
Leaf tobacco. ....	16
tobacco, dealers, former classification. ....	17
Lease. ....	75
Legacy tax. ....	88
tax a lien. ....	95
tax, how paid. ....	95, 98
tax, similar taxes in states and abroad. ....	91
Legatee not liable <i>in personam</i> . ....	98
Legislation, loose method of. ....	24, 36
existing made applicable. ....	99
Leniency induced by lack of stamps. ....	42
Lessee to pay tax. ....	4
Letter of credit. ....	61
Letters as contracts. ....	20, 21
License, special tax not a. ....	6
"License," "special tax" instead of. ....	6
state and local taxes as. ....	5
tax under former acts. ....	5, 6

# INDEX.

153

	PAGE.
Life insurance.....	73
insurance, industrial .....	73
Lightning insurance against .....	73
Limit of time for redemption of stamps .....	54
Limitation on suit to recover tax.....	99
Liquor Tax .....	I
Loan, building and stock of certain, exempt.....	45
Loan, popular .....	102
Loans, governmental .....	101, 102
Local securities exempt.....	45
Lodge insurance.....	73
Lost stamps .....	54

## M.

Maker of mixed flour who has not paid tax, dealing with.....	110
Manifests (custom-house).....	76
for British North America ports.....	80
Manufecture, etc., of medicines .....	47
for exportation .....	52
Manufacturer, when dealer deemed.....	51
penalty for removing stamp.....	48
sworn monthly statement of .....	51
of mixed flour, special tax on.....	104
and dealers, tobacco, special tax on .....	161, 17
"Margin," stocks on.....	8
Marine certificates .....	66
insurance.....	73
policies .....	75
surveyor .....	66
Market gardener.....	11
Marking mixed flour falsely.....	106
Marks on packages of mixed flour .....	105
Marriage certificate .....	66
promise of.....	21
Materiality of change in instrument.....	22
Medicinal proprietary articles and preparations .....	80
Medicines, tax on.. ..	19
manufacture, etc., of.....	47
prepared under prescription .....	47
Memorandum showing an interest.....	65
of hire of land.....	75

	PAGE.
Memorandum from seller to buyer.....	55, 57
of sale by broker.....	68
check not taxable.....	59
I. O. U. not to be stamped .....	61
Mercantile credits (guarantee insurance).....	74
Merchandise memorandum of sale of .....	68
entry of.....	72
on storage.....	80
imported.....	52
due-bill.....	61
Message telegraphic .....	46, 72
telephone .....	64
Method of cancellation of stamps .....	53
of canceling documentary stamps.....	27
of canceling proprietary stamps.....	28
Middleman in conveyance.....	71
Misdemeanor..... 23, 26, 27, 30, 32, 34, 47, 49, 50, 52, 56, 58, 105, 107	
Misdemeanors, discussion.. ..	23, 49
and penalties as to mixed flour.....	107
Mistake in omitting stamp .....	35, 37
Mitigation of severity of law .....	42
Mixed flour .....	103
imported, to pay tax .....	109
tax on in effect, when .....	112
Money orders, domestic.....	60
order, telegraph or express.....	61
received from executor on compromise .....	93
from sale of real estate under will .....	94
received bond for.....	65
Monthly statements .....	64
Mortgage.....	77
insufficiently stamped, void.....	37, 78
presumed to be properly stamped when recorded.....	44
insufficiently stamped, inadmissible.....	44
post-stamping .....	77
assignment or transfer of .....	77, 78
assignment of policy, when .....	75, 78
chattel needs no stamp .....	44, 77, 118
bond.....	65
note needs no stamp.....	77
Mother, tax on legacy to.....	89

# INDEX.

155

	PAGE.
Municipal securities exempt.....	45
Museums, tax on.....	4, 12
Mutual fire insurance companies.....	73

## N.

Natural carbonated spring waters .....	80
Neglect to cancel stamp, effect on evidence.....	29
to cancel stamp, effect on note.....	28
to stamp, not invalidate unless intentional .....	41
Negotiable instrument, omitting stamp from.....	30
Nephew, tax on legacy to ....	89
New matter in stamped instrument.....	22
Niece, tax on legacy to .....	89
Non-interference in local process.....	67
Note broker.....	3
Note, promissory.....	60
omitting stamp from .....	30, 42
judgment on unstamped, good .....	22
mortgage, needs no stamp .....	77
of hand, memorandum of sale of .....	68
not invalidated by neglect to cancel.....	28
Notice on label for mixed flour.....	106, 108

## O.

Objection to evidence must be intentional omission.....	42
Obligation (guarantee insurance).....	74
Occupation, special taxes on.....	2, 5, 6
State tax on, as privilege.....	5
Officers, revenue, rulings by.....	21
revenue, additional.....	14, 15
Official bond of sheriff needs no stamp.....	46
Oils.....	80
Ointments .....	80
Old rate stamps, use of.....	18
Oleomargarine.....	104
Omission, accidental, inadvertent, etc.....	35
to cancel, innocent.....	29
of stamp, effect on instrument.....	24
of stamp, how cured.....	24, 31
supplied by authorized attorney.....	40
supplied in court.....	37, 40

	PAGE.
Omission, supply of, of stamp.....	34
ignorant, to stamp, when supplied.....	40
intentional, of stamp invalidates....	41
of stamp, not a ground for demurrer.....	42
must be fraudulent to invalidate instrument.....	41
of stamp from negotiable instrument.....	30
Oral lease.....	76
Order (sight) .....	58
for payment of money.....	59, 60
for money, omitting stamp from .....	30
domestic money.....	60
Organization of Defendant.....	iv
Origin of Stamp Duties .....	iii
Original issues of stocks.....	55
obligation enforceable though instrument is unstamped,	43
package .....	83

## P.

Package .....	82
size of tobacco and snuff .....	13, 15, 16
of mixed flour, size of .....	108
mixed flour to be marked .....	105
empty, of mixed flour, stamp on to be destroyed .....	111
Packer of mixed flour.....	104
of mixed flour who has not paid tax, dealing with . . .	110
Packet .....	80, 83
Paid checks, revenue officer may inspect.....	59
Palace car tickets.....	88
Parlor car tickets.....	88
Partition deeds.....	69
Partnership, Special Tax on.....	6
dissolution of.....	7
Passage ticket.....	78
tickets for British North American ports.....	80
Pass-book, entry in, is certificate of deposit .....	59
Pastes .....	80
Patent medicine, articles similar to .....	48
Pawnbroker, definition.....	3
tax on.....	3, 10
Payment, order for, of money... ..	58, 59
of legacy tax before distribution.....	95

# INDEX.

157

	PAGE,
Payment of special tax, when and how.....	6
Penalty on failure to pay special tax.....	17, 18
collector may remit.....	34
Penalties and misdemeanors as to mixed flour.....	107
for violations of law as to mixed flour.....	105, 106
mixed flour, enforcement of.....	111
Performance of duty, bond for.....	65
Perfumery.....	47, 83
Personal property, legacies and distributive shares... ..	88
Petrolatum .....	83
Petroleum, companies, refining.....	87
Phial.....	80, 83
Physician's prescription exempt.....	47
Pills .....	80
Pipe line, for petroleum, company owning.....	87
Plaœ of business, special tax for each.....	6
Plasters .....	80
Plate glass insurance.....	74
Pleaded, omission of stamp, how.....	42
Pledge .....	77
assignment or transfer of.....	77
when not taxable.....	75
Police power of State not circumscribed.....	6
regulations .....	100, 104
Policy, insurance.....	72
insurance, assignment of.....	75, 77
Pomade .....	83
Port warden, certificates by.....	66
Ports, British North America, exemptions.....	80
"Portion of tenement" ... ..	76
Postage-stamps, imprinted, used.....	19
Post-dated check is a promissory note.....	59
draft is promissory note.....	61
Post-stamping .....	34, 36
under former acts.....	38
of mortgage.....	77
does not affect intervening rights.....	36
Pot.....	80, 83
Powders.. ..	80
Power of attorney .....	79
of attorney, when exempt .....	79

	PAGE.
Power of sale under will, legacy tax.....	94
Preparations, tax on.....	19
proprietary, medicinal.....	80, 83
Preparation of stamps .....	53
of medicines, etc. ....	47
Presumption that recorded paper was stamped.....	42
no, of fraudulent intent.....	41, 42
Printer of stamps, crime by.....	28
Prior unstamped conveyance.....	70
Private proprietary stamps.....	27
warehouse .....	80
Privilege, State tax on .....	5
Probate duty, English.....	93
Proceedings to collect legacy tax .....	97, 99
Proceeds of sale of realty, bond for, exempt.....	65
Produce broker .....	11
Producers of tobacco not dealers.....	17
Production of books, new commodity .....	112
Products agriculture on storage.....	80
sale of, on exchange.....	57
Profits, insurance of.....	73
Promise of marriage .....	21
Promissory note.....	60
note, endorsement of.....	61
note, post-dated check is .....	59
note, certificate of deposit is .....	60
note, instrument by several persons.....	60
note, balance due on accounting .....	61
note, receipt for money loaned .....	61
note, due-bill is .....	61
note, post-dated draft.....	61
Property, memorandum of interest in.....	66
memorandum of sale of.....	68
passing by will.....	90
on storage.....	80
personal, legacies and distributive shares.....	88
real or personal, mortgage of... ..	77
Proprietary articles or medicines .....	47, 48
medicinal .....	80
discussed .....	83
stamps, illegal use of.....	48



	PAGE.
Proprietary stamps, private .....	27
stamps, sale of, on credit .....	31
Proprietor means one in control.....	12
of bowling alley, tax on .....	5, 12
of billiard room, tax on.....	5, 12
of theaters, etc., tax on.....	4, 12
of circuses, tax on.....	4, 12
of public exhibitions, tax on.....	4, 12
Protest.....	79
on payment of legacy tax.....	99
Provisions of law applicable.....	99
Proxy .....	79
Public exhibitions, tax on.....	4, 12
warehouse.....	80

## R.

Railroad company receipts.....	63
telegrams exempt .....	46
Rates of legacy tax.....	90
Rate, old, use of, stamps .....	18
Real estate broker.....	11
estate, memorandum of sale of.....	68
estate, sale of, money arising from legacy tax.....	94
estates, title to (guarantee insurance).....	74
Estate Trust Co. not a banker.....	8
Reality, conveyance of.....	69
Receipt for express or freight .....	63
for goods, etc., domestic carriage .....	63
for money loaned.....	61
for goods, etc., for export .....	63
for legacies.....	96
to shipper or consignor.....	63
for agricultural products on storage .....	80
warehouse .....	80
Receipts, gross, tax on.....	87
Recognizance (fidelity insurance).....	74
Record of unstamped instrument not evidence .....	44
how corrected by post-stamping.....	35
copy of, certificate to.....	67
Recovery on contract where instrument is inadmissible .....	43
of tax from legatee .....	98

	PAGE.
Redemption of spoiled stamps.....	54
Refining companies, sugar and petroleum .....	87
Refusal of claim for drawback.....	87
to make return for legacy tax ... ..	96
Registration, instruments to be stamped before ... ..	33
Registry of unstamped instrument not evidence.....	44
Regulations.....	14, 33, 51, 52, 53
for exportation.....	87
Relatives affected by legacy tax .....	89
Relief associations (insurance).....	73
Remedies of taxpayer. ....	101
Removal of residence affecting legacy tax.....	92
of manufactured articles before stamping .....	50
Removing cancellation marks.....	25
marks from mixed flour.....	106
stamps.....	25
Renewal of note, etc.....	60
of insurance.....	75
Rent, contract for.....	75
insurance of.....	73
Repeal of laws.....	99
Replevin not permissible.....	101
Residence, removal of, affecting legacy tax.....	92
Retail price or value. ....	81, 84
sale, articles to be stamped at.....	85
Return of gross receipts by certain companies.....	87
of taxable property for legacy tax.....	95
by constable to summons.....	67
of tobacco, etc., on hand.....	14
Revenue acts, construction of .....	20
officer may inspect paid checks.....	59
Internal, Department.....	iv, 16
Taxes classified.....	99
Taxes, how enforced . . . . .	100
Rights, intervening, not affecting.....	36
of government.....	100
Rome, legacy tax in.....	91
Rules for legacy tax.....	95
and regulations as to mixed flour.....	III, 112
Rulings.....	118
departmental, weight of.....	21

**S.**

PAGE.

Sale of stamps .....	54
instruments without stamp.....	33
of foreign securities, taxable.....	39
retail, articles to be stamped at.....	85
of proprietary stamps on credit.....	30, 33
of real estate, money arising on, legacy tax .....	94
of unstamped mixed flour .....	109
or removal of unstamped articles.....	50
Sales, agreement for.....	55
memoranda of.....	55
of stocks .....	55
of products on exchange....	57
of mixed flour in unmarked, etc., packages .....	105
Salves .....	80
Samples .....	82
Savings banks, certain, excepted .....	3
Schedule A.....	33, 55
B.....	19
B, penalty.....	47
B, when in effect.....	52
B, provisions applicable to.....	47
Seats in palace and sleeping cars.....	88
Second offense as to mixed flour.....	112
Securities, government and local exempt.....	45
Security, conveyance for.....	77
Seller's memorandum to buyer.....	55, 57
Selling without stamp, indictment for.....	48
Share, distributive, tax on....	89
Sheriff's official bond.....	46, 65
Shipper, receipt to....	63
Shipping broker.....	3
Sight draft .....	58
Silver bullion, coinage of.....	103
Similar articles .....	48, 84
Similitude clause .....	84
Sirups.....	80
Sister, tax on legacy to.....	89
Size of package of mixed flour..	108
Sleeping car tickets.....	88
Snuff, <i>see</i> Tobacco.	
Special label for mixed flour.....	106

	PAGE.
Special laws applicable.....	99
taxes .....	2
tax to be paid in advance .....	6
tax, failure to pay, penalty for.....	17
taxes prior to this act.. . . .	5, 6
tax on mixed flour-makers, etc .....	104
tax to be prepaid under penalty.....	75
tax, how far a license .....	6
tax instead of "license".....	6
tax, constitutional.....	6
tax, to be paid in stamps .....	6
tax, where assessed .....	6
tax on partnership .....	6
tax for each place of business.....	6
taxes on tobacco dealers and manufacturers .....	16, 17
Spirits .....	80
Spoiled stamps, redemption of .....	54
Spring water, natural and carbonated.....	80
Stamp taxes on bonds .....	19
taxes on debentures.....	19
taxes on certificates of stock.....	19
taxes on certificates of indebtedness.....	19
taxes on documents .....	19
taxes on instruments.....	19
taxes, schedule B, when applicable .....	52
Stamps on sales .....	55
proprietary, sale of on credit .....	30
distribution of.....	32
preparation, distribution, cancellation.....	53
washed.....	26
cancelling, on imports.....	52
lack of inducing leniency,.....	42
private proprietary.....	27
proprietary, illegal use of.....	48
sale of.....	54
old rate, use of.....	18
spoiled, redemption of.....	54
cancel, who should.....	28
cancellation of.....	27
not required on goods for export.....	51
Stamp, instrument inadmissible without.....	39

	PAGE
Stamp. neglect to cancel, will not invalidate note.....	28
innocent omission to cancel.....	29, 40
deficient. ....	39
when may be affixed., ....	38, 40
omission of, intentional.....	41
revenue, who to affix. ....	21, 29
omission of, how pleaded.....	42
omitting from negotiable instrument.....	30
on empty package of mixed flour to be destroyed.....	111
failure to, documents.....	22
no part of note.....	42
documentary, kind of not essential ....	44
duties, origin of.....	iii
legislation, construction of,.....	20
provisions of law applicable .....	99
Stamping, deficient cured .....	34, 36
post .....	34
Standard, according to.....	62
State courts, evidence in... ..	39
tax on occupation as privilege.....	5
securities exempt.....	45
Statements, monthly.....	64
sworn monthly, of industrial insurance.....	73
sworn monthly, by manufacturer.....	51
Steam boiler insurance .....	74
boat company receipts .....	63
Stocks, memorandum of sale of.....	68
original issue of.....	55
sales and transfers of... ..	55
broker, tax on.....	3
when a banker .....	7
Stored in warehouse .....	2
Stranger legatee taxed ....	89
Straw man in conveyance .....	71
Subsequent holder of unstamped note not affected .....	31
Substance .....	83
Substitutes .....	48
for tobacco .....	13
for chewing gum... ..	84
Succession Duty Act.....	iv
Tax.....	91, 93

	PAGE.
Sufficiency of indictment for selling without stamp.....	48
Sugar, companies refining.....	87
Summons, returned by constable.....	67
Superintendent of factory may make statement.....	51
Supply of omission of stamp.....	34
Surety bond.....	65
company . . . . .	74
Surplus included in capital.....	2, 8
Surveyor, marine . . . . .	66
Sworn monthly statement of manufacturer.....	51
of industrial insurance.....	

## T.

Tariff adjudication.....	83
Tax. <i>See</i> Schedules A and B.....	
on beer and liquor.....	1
bankers.....	2
bonds.....	19
bowling and billiards.....	5
brokers.....	3
certificates of indebtedness.....	19
stock.....	19
cigars . . . . .	12
cigarettes.....	12
circuses.....	4
commercial brokers.....	3
custom-house brokers . . . . .	3
debentures.....	19
documents . . . . .	19
exhibitions.....	4
foreign securities.....	39
instruments . . . . .	19
medicines . . . . .	19
mixed flour . . . . .	108
assessment on . . . . .	109
pawnbrokers . . . . .	3
preparations . . . . .	19
theater, etc . . . . .	4
tobacco . . . . .	12
already stamped,.....	13
when takes effect . . . . .	15

	PAGE.
Tax, amount of not reviewable.....	12
laws, revenue, how enforced.....	109
deed.....	70
exempt.....	45
Taxpayer's rights and remedies.....	101
Tea, import duty on.....	113
Telegram.....	46, 72
Telegraph companies cancel stamps.....	54
Telegraphic money order.....	61
Telephone messages.....	64
Testator, death of, tax accrues on.....	98
domiciled abroad.....	92
Theaters, definition.....	4
tax on.....	4, 12
Ticket, passage.....	78
for British North American ports.....	80
Tickets, palace, parlor and sleeping car.....	88
Time draft.....	60
Tinctures.....	80
Titles to real estate, guarantee insurance.....	74
Tobacco, tax on.....	12
former rates.....	15
already stamped, tax on.....	13, 15
in warehouse.....	15
returns of, on hand.....	14
size of packages.....	13, 15, 16
Tobacco dealers and manufacturers, special tax on.....	16
Toilet water.....	83
Tooth paste.....	83
wash.....	83
Tonics.....	80
Town securities exempt.....	45
Trade-mark, medicines and similar articles.....	48
Transfer of mortgage or pledge.....	77
foreign securities taxable.....	39
realty.....	69
document without stamp.....	33
certificate of profits, etc.....	66
Transportation, receipt for.....	63
Treasurer's bond.....	65
Trial, cure of defect in stamp on.....	38

	PAGE.
Troches.....	80
Trustee to make return for legacy tax.....	95
pay legacy tax.....	88
Trust conveyance in, as security.....	77
declaration of.....	69
fund, legacy tax covers.....	93

## U.

Uncle, tax on legacy to.....	89
Uncompounded drug or chemical exempt.....	47
Undertaking, fidelity insurance.....	74
Unstamped deeds, when valid.....	38
conveyance inadmissible.....	71
instrument, record of, not evidence.....	44
incompetent evidence.....	23
paper, evidence in criminal action.....	43
of collateral fact.....	43
wrongful destruction of ....	43
mixed flour, sale of.....	109
note in hands of good faith endorsee.....	31
United States, Internal Revenue in. ....	iv
government, party to bill of exchange.....	46
securities exempt.....	45
Urgent necessity in omission of stamp.....	33
Usages of stamp office.....	21
Use of land, contract for.....	75
old rate stamps.....	18
Used packages of mixed flour, penalty for re-use.....	106
Used stamps.....	26
"Utterly void" record, but deed good.....	72

## V.

Value, consideration or.....	69
how determined.....	70
of estates, tax on.....	90
foreign money.....	62
property stored.....	80
Valid, contract may be, though instrument void.....	43
Validity, date affecting.....	21
of instrument affected by omission.....	41



	PAGE.
Vaseline .....	83
Vested legacy when under tax.....	93
Void instrument does not invalidate contract... ..	43
failure to cancel stamp on deed will not make it.....	72
mortgage insufficiently stamped.....	37, 78

## W.

Warden, port, certificate by .....	66
Warehouse, beer in.....	I
bonded for export .....	51
receipt .....	80
Warehousing, entry for.....	72
Washed stamps.....	26
Waters.....	80
natural spring and carbonated.....	80
Weekly payment plan of insurance.....	73
What is a promissory note.....	60
Wheat flour.....	103
When a stamp may be affixed.....	38
When act to take effect.....	115
Who may obtain post-stamping.....	34, 36
to affix stamp.....	21, 29
to cancel stamp.....	54
Wife exempt from legacy tax.....	90
Will, bequest to pay debts is a legacy.....	94
protested before act, legacy tax.....	93
forgiveness of debt is a legacy.....	94
legacy tax on property under.....	89
Wine, bottled.....	85

## Y.

Yard, warehouse receipt.....	80
------------------------------	----

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